TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 163.

ATLANTIC AND PACIFIC TELEGRAPH COMPANY, PLAINTIFF IN ERROR,

vs.

CITY OF PHILADELPHIA.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 12, 1901.

(18,264.)

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INDEX.

	Original.	Print.
Writ of error	1	1
Citation (copy)	3	1
Transcript from State court	4	2
Exemplification	4	2
Docket entries	4	2
Præcipe for summons	5	2
Summons and service	6	3
Statement of claim	8	3
Exhibit A—Ordinance to regulate the erection and maintenance of telegraph poles in the corporate limits of the city of Philadelphia	11	5
B—Ordinance to provide for the payment of an annual charge for the use of telegraph poles belonging to the city of Philadelphia, and to carry the same into effect	16	7
C—Ordinance to regulate the introduction and use of underground conduits, wires, and cables for electrical conductors in the streets of the city of Philadelphia, &c.	20	8
Appearance for defendant	29	12
Order for removal	30	12

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 1, 1902.

	Original.	Print
Petition for removal	31	13
Bond for removal	33	14
Clerk's certificate	36	15
Affidavit of defense	37	15
Appearance for plaintiff	40	17
Pleas	41	17
Amended statement of claim	42	17
Exhibit A—Ordinance to regulate the erection and maintenance of telegraph poles in the corporate limits of the city of Philadelphia	45	19
B—Ordinance to regulate the introduction and use of underground conduits, wires, and cables for electrical conductors in the streets of the city of Philadelphia, &c.	50	21
Rule as to amendment, &c.	58	24
Plea	59	25
Jury	60	25
Verdict	60	25
Bill of exceptions	61	25
Statement	61	26
Evidence for plaintiff	63	26
Ordinance of January 6, 1881	63	26
March 30, 1883	68	28
August 5, 1886	76	32
Evidence for defendant	83	35
Testimony of Wm. B. Gill	83	35
Exhibits offered	112	49
Extracts from Report of the Chief of Electrical Bureau	112	49
Evidence for plaintiff in rebuttal	117	51
Testimony of Abraham M. Beitler	117	51
Testimony of David R. Walker	130	56
Exhibit No. 1—Statement covering the actual cost of maintenance and keeping in repair all owned and leased wires in the sixth district, eastern division, W. U. Tel. Co., from 1885 to 1891, inclusive	136	59
No. 2—Amount of license charges for maintenance of poles and wires overhead for telegraph, telephone, and electric light purposes in the city of Philadelphia	137	59
No. 3—Statement of the number of telegraph poles and miles of telegraph wire belonging to the city of Philadelphia erected and maintained in and over the streets thereof during the years 1885 to 1891, inclusive	138	60
No. 4—Statement of the salaries of the chief of electrical bureau of the city of Philadelphia and his assistants, clerks, linemen, &c., for the years 1885 to 1891, inclusive.	139	60
Testimony of David R. Walker (resumed)	142	61
Daniel J. McNamara	167	73
Edward A. Waters	169	74
Wm. D. Marks	173	76

	Original.	Print
Evidence for defendant in rebuttal	180	79
Exhibits offered	180	79
Extracts from department report of 1890	181	79
Exhibit No. 5—Form for report to department of public safety	182	80
No. 6—Rules and regulations of the department of public safety	183	80
No. 7—Statement of overhead and underground wires	189	83
Charge to jury	190	83
Judge's certificate to bill of exceptions	194	85
Motion for reduction of amount of verdict	195	85
Opinion on motion	196	85
Stipulation as to amount of damages, &c.	199	87
Assignment of errors	201	87
Petition for writ of error	203	88
Bond on writ of error	206	90
Stipulation as to record	208	91
Clerk's certificate	210	91

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you between Atlantic and Pacific Telegraph Company plaintiff in error and City of Philadelphia, defendant in error a manifest error hath happened, to the great damage of the said Atlantic and Pacific Telegraph Company, as by its complaint appears. We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington within thirty days, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right,
2 and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 2nd day of August in the year of our Lord one thousand nine hundred and one.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of the Circuit Court of the United States.

Allowed
BY THE COURT.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to City of Philadelphia, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C. within thirty days, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States, eastern district of Pennsylvania wherein The Atlantic and Pacific Telegraph Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John B. McPherson, judge, holding circuit

court of the United States, this third day of August, in the year of our Lord one thousand nine hundred and one.

JOHN B. McPHERSON, *J.*

Service accepted
E. SPENCER MILLER,
Ass't City Solicitor.

4 *Exemplification.*

PHILADELPHIA COUNTY, } *sct:*
State of Pennsylvania, }

Among the records and proceedings of the court of common pleas, No. 4 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record, at No. — December term, 1891, to wit:

Docket Entries.

December term, 1891.

CITY OF PHILADELPHIA
vs. } 319.
ATLANTIC AND PACIFIC TELEGRAPH COMPANY.

Miller & Warwick
Read & Pettit
Jan. 21, 1892

Sum's assumpsit exit Dec. 31, 1892
Ret. 1 Mon. Jan. 1892
Served writ & statement Jan. 4 1892
Jan. 18, 1892.—Petition of def't for removal of case to U. S. circuit court filed
Eo die.—Bond filed
Feb'y 27, 1892.—Rule absolute
Eo die.—Ordered that def't be and hereby is authorized
5 and permitted to remove cause to U. S. circuit court as in its petition prayed.

CITY OF PHILADELPHIA
vs. } C. P. No. 4, Dec. Term, 1891. No. —.
ATLANTIC AND PACIFIC TELEGRAPH.

Precipe for Summons.

To the prothonotary, court of common pleas No. 4:

Issue summons assumpsit against the above-named defendant.

E. SPENCER MILLER,
Ass't City Solicitor.
CHARLES F. WARWICK,
City Solicitor.

(Endorsed:) 319 D. T. 1891 C. P. 4 City *v.* Telegraph Co. Præcipe for summons Filed Dec. 31, 1891 W. MacCain pro proth'y E. Spencer Miller Chas. F. Warwick

6 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that you summon Atlantic and Pacific Telegraph late of your county, so that it be and appear before our judges, at Philadelphia, at our court of common pleas, No. 4 of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of January next, there to answer City of Philadelphia of a plea of assumpsit. And *to* have you then and there this writ.

Witness the Honorable M. Russell Thayer president judge of our said court, at Philadelphia the 31st day of Dec. in the year of our Lord, one thousand eight hundred and ninety-one (1891)

W. MACCAIN,
Pro Prothonotary.

(Endorsed.)

Served The Atlantic and Pacific Telegraph Company by giving January 4, 1892 a true and attested copy of the within writ to W. B. Gill superintendent of said company and making known to him the contents thereof

So answers

PETER SAYBOLT,
Deputy Sheriff.
HORATIO P. CONNELL, *Sheriff.*

7 319 Dec. term 1891 Court of common pleas No. 4 City of Philadelphia *vs.* Atlantic & Pacific Telegraph Company Summons assumpsit Statement Miller Warwick

8 THE CITY OF PHILADELPHIA *vs.* ATLANTIC & PACIFIC TELEGRAPH CO. } C. P. No. 4, Dec. Term, 1891. No. —.

Statement.

The plaintiff claims of the defendant the sum of $3715.00 with interest from the 31st day of December of each year hereinafter stated, being the sum total of charges due to the said plaintiff by the defendant, according to the following specifications.

The proper authorities of the city of Philadelphia duly passed, December 21st, 1880, an ordinance entitled "An ordinance to provide for the payment of an annual charge for the use of telegraph poles belonging to the city of Philadelphia, and to carry the same

into effect," and on the 6th day of January, 1881, an ordinance entitled "An ordinance to regulate the erection and maintenance of telegraph poles in the corporate limits of the city of Philadelphia," and on the 30th day of March 1883 an ordinance entitled "An ordinance to regulate the introduction and use of underground conduits, wires and cables for electrical conductors in the streets of the city of Philadelphia, and to provide for charges for underground, overground, or overhead wires, and to repeal an ordinance entitled 'An ordinance to regulate the introduction and use of underground conduits, electrical cables and wires for electrical conductors, in
9 the streets of the city of Philadelphia, and to provide for charges for overground wires,' approved June 21, 1882" Copies of said ordinances are attached hereto as Exhibits A, B, and C, that the same may be taken as a part of this statement.

The said defendant, prior to and since the first day of January, 1885, has used the poles belonging to the city of Philadelphia and has attached thereto telegraph and telephone wires and fixtures of the length hereinafter indicated, and has certified accordingly to the superintendent of the police and fire-alarm telegraph, under the terms of the ordinance above referred to, approved 30 March 1883.

The said defendant has erected and maintained poles within the corporate limits of the city of Philadelphia to the number hereinafter stated.

The said defendant has maintained wires on poles other than those belonging to the city of Philadelphia and on buildings, of the length hereinafter stated, and has certified accordingly to the superintendent of the police and fire-alarm telegraph, under the terms of the ordinance above referred to, approved March 30, 1883.

10

	In the year 1885.	In the year 1886.	In the year 1887.	In the year 1888.	In the year 1889.	In the year 1890.	Aggregate.
No. of miles of wire attached to city poles at $2.50	16	6	.....	.....	....	1	57.50
No. of poles maintained at $1.00	312	312	312	303	303	293	1835.00
No. of miles of wire maint'd on poles other than those belonging to the city & on bldgs., at $2.50	134	144	147	145	145	14	1822.50
Sum total	.....	.....	.....	.....	.....	.....	3715.00

By reason whereof the said defendant, by force of said ordinance is indebted to the said plaintiff in the sum of $3715.00 with interest as aforesaid, wherefore said plaintiff brings his suit.

Edwin S. Stuart, being duly sworn, according to law, deposes and says the facts above stated are true.

——— ———.

Sworn and subscribed before me this 31st day of December A. D. 1891.

——— ———.

11 EXHIBIT A.

An ordinance to regulate the erection and maintenance of telegraph poles in the corporate limits of the city of Philadelphia.

Whereas, great inconvenience and annoyance have been occasioned to property-owners by the placing of telegraph poles in front of their premises.

And whereas, the lives and property of citizens travelling upon the public streets and highways have been imperilled by the erection and maintenance of inadequate or unsound telegraph poles thereon, so that it has become necessary to establish a system for the proper inspection of such poles, and for the regulation of the erection and maintenance thereof; therefore,

SECTION 1. The select and common councils of the city of Philadelphia do ordain, That whenever permission shall have been granted by councils to any corporation, firm, or individual, to construct a line of telegraph which requires the erection of poles in or upon any of the public streets or highways within the corporate limits of the city of Philadelphia, it shall be the duty of such corporation, firm, or individual, before any pole shall be erected, to submit to the superintendent of the police and fire-alarm telegraph a written application specifying the number and size of poles intended to be erected, and designating the places where the same are intended
12 to be inserted, and if no objection be made hereto it shall be the duty of the said superintendent of the police and fire-alarm telegraph to issue a license to the said applicant for the erection of the specified poles at the designated places of insertion. In case of objections being made to the whole or any part of such application, it shall be the duty of the superintendent of the police and fire-alarm telegraph to hear the same and to grant the license either in accordance with the application or with such conditions and modifications to secure the purposes of this ordinance as the case may require.

No pole shall be newly erected without the license of the superintendent of the police and fire-alarm telegraph shall have been previously obtained therefor as provided in this section, and for every license so granted there shall be paid to the city treasurer, for the use of the city, the sum of five (5) dollars per pole.

SECT. 2. It shall be the duty of the superintendent of the police and fire-alarm telegraph to cause a thorough and careful inspection to be made, at least once in every year, of all telegraph or telephone poles erected within the corporate limits of the city of Philadelphia, and if any pole shall be found defective or dangerous from any

cause, he shall notify the corporation, firm or individual owning such pole, who shall forthwith replace the same with a sound pole; and if the said owner neglect or refuse to replace such de-
13 fective pole within forty-eight hours after receiving such notification, he or they shall be liable to a fine of five (5) dollars for each and every day during which said neglect or refusal shall continue, to be collected as debts of like amount are now by law recoverable.

SECT. 3. All telegraph poles now erected, or hereafter to be erected in the city of Philadelphia, which are or shall be owned by any corporation, firm, or individual, shall be designated by the names or initials of such owner, and each of said poles shall bear a distinctive number, together with the names or initials, and number shall be legibly marked with oil paint upon the poles so designated. It shall be the duty of every such owner or owners, on or before the first Monday of February, and annually thereafter on the first Monday of January in each and every year, to make application to the superintendent of the police and fire-alarm telegraph for a license to maintain the poles theretofore erected for the ensuing year specifying the poles so to be maintained by their designation as provided for in this section, and the superintendent of the police and fire-alarm telegraph shall issue a license to such applicant which shall authorize the maintenance of the poles designated in the application, only for the period of one year from the first day of January next ensuing the date of said application, and no longer; and the charge for issuing such license shall be the sum of one (1) dollar for
14 each and every pole authorized to be maintained thereby, and shall be paid to the city treasurer for the use of the said city.

SECT. 4. On and after the first day of January, A. D. 1881, no telegraph pole shall be maintained within the corporate limits of the city of Philadelphia without an annual license for the maintenance thereof shall have been previously granted for the same, in accordance with the provisions of section 3 of this ordinance; any privilege heretofore granted by resolution or ordinance for the erection and maintenance of poles for telegraphic or telephonic purposes be, and the same are, hereby repealed. Any person or persons violating the provisions of this section shall be liable to a fine of fifty (50) dollars for each and every telegraph pole so maintained without license, to be recovered as debts of like amount are now by law recoverable.

SECT. 5. Upon complying with the provisions and requirements of this ordinance the privileges heretofore granted to such individuals, companies, or corporations by resolution or ordinance shall not be in any way affected. The councils of the city of Philadelphia, however, reserves the right to revoke by ordinance any of the privileges mentioned in this or any other ordinance or resolution.

JOS. L. CAVEN,
President of Common Council.

Attest: JOSEPH H. PAIST,
Clerk of Select Council.

15 JOHN McCULLOUGH,
President pro Tem. of Select Council.

Approved this sixth day of January, anno Domini one thousand eight hundred and eighty-one (A. D. 1881).

WILLIAM S. STOKLEY,
Mayor of Philadelphia.

16 EXHIBIT B.

An ordinance to provide for the payment of an annual charge for the use of telegraph poles belonging to the city of Philadelphia, and to carry the same into effect.

SECTION 1. The select and common councils of the city of Philadelphia do ordain, That all individuals, companies or corporations now using, or who may hereafter use or attach any telegraph or telephone wires or fixtures to the telegraph poles belonging in whole or part to the city of Philadelphia, shall pay to the city treasurer for the use of said city annually the sum of fifty (50) cents for each and every attachment made to each and every pole.

SECT. 2. Each and every individual, company, or corporation, having telegraph or telephone wires or fixtures attached to the telegraph poles owned in whole or in part by the city of Philadelphia shall, in writing, on or before the first day of March, 1881, and annually thereafter on or before the first day of January, certify to the superintendent of the police and fire-alarm telegraph the number and location of such attachments; and upon complying with the provisions and requirements of this ordinance, the privileges heretofore granted to such individuals, companies, or corporations, by resolution or ordinance, shall not be in any way affected.

17 SECT. 3. It shall be the duty of the superintendent of the police and fire-alarm telegraph to furnish the city treasurer, on or before the second Monday of March, 1881, and annually thereafter on or before the second Monday of January, the number of and location of said attachments for which each individual, company, or corporation, is liable and required to pay for under this ordinance; and it shall be the duty of such individual, corporation, or company, to pay to the city treasurer for the use of the city as aforesaid, the charge or amount due on such attachments within thirty (30) days after the return, as hereinbefore specified, is made by the superintendent of the police and fire-alarm telegraph.

SECT. 4. Upon the failure of any individual, company, or corporation, to pay to the city treasurer, on or before the time specified in section 3 of this ordinance, the sum or amount due by such individual, company, or corporation, for the privileges hereinbefore specified, notice of such failure to pay shall in writing be furnished by the city treasurer to the superintendent of the police and fire-alarm telegraph within fifteen (15) days thereafter; and the superintendent of the said police and fire-alarm telegraph is hereby directed and authorized, upon the receipt of said notice, to proceed at once and remove from said poles any telegraph or telephone wires, fixtures, or attachments belonging to or placed there by such defaulting individuals, companies, or corporations.

18 SECT. 5. That hereafter no individual, company, or corporation, shall place any telegraph or telephone wires or fixtures on any telegraph pole or poles owned in whole or part by the city of Philadelphia, without permission is first given by these councils, by the passage of an ordinance to that effect. And in case any wire, wires, or fixtures, shall be placed on any such pole or poles, without such authority first obtained, then the superintendent of the police and fire-alarm telegraph is required and directed to remove the same without notice.

SECT. 6. It shall be the duty of the superintendent of the police and fire-alarm telegraph to furnish, within fifteen days after the passage of this ordinance, a certified copy thereof to all individuals, companies, or corporations, affected by the provisions thereof.

SECT. 7. All privileges heretofore granted by resolutions or ordinances, or by the provisions of this ordinance, shall be revocable by the passage of an ordinace without notice to that effect; and all ordinances, resolutions, or parts of ordinances and resolutions inconsistent with the provisions of this ordinance are hereby repealed.

JOS. L. CAVEN,
President of Common Council.

Attest: ALEX. J. McCLEARY,
Assistant Clerk of Select Council.

GEO. A. SMITH,
President of Select Council.

19 Approved this twenty-first day of December, anno Domini, one thousand eight hundred and eighty (A. D. 1880).

WILLIAM S. STOKLEY,
Mayor of Philadelphia.

20 EXHIBIT C.

An ordinance to regulate the introduction and use of underground conduits, wires and cables for electrical conductors in the streets of the city of Philadelphia, and to provide for charges for underground, overground or overhead wires, and to repeal an ordinance entitled "An ordinance to regulate the introduction and use of underground conduits, electrical cables and wires for electrical conductors, in the streets of the city of Philadelphia, and to provide for charges for overground wires," approved June 21, 1882.

SECTION 1. The select and common councils of the city of Philadelphia do ordain, That all corporations, firms and persons to whom permission has heretofore, or which may hereafter be granted, for running or laying underground conduits, tubes or pipes for electrical conductors, or cables, or wires, or all corporations, firms and persons to whom permission has heretofore, or which may hereafter be granted, for the erection of poles, fixtures, cables, wires and conductors in or over the streets or housetops in the city of Philadelphia, shall conform to the requirements of this general ordinance.

SECT. 2. That no street, alley, lane or road in the city of Philadelphia shall be broken or occupied by any corporation, firm or person, for the purpose of laying down conduits, tubes or pipes for electrical conductors, cables or wires, unless authority by
21 ordinance be first obtained. That during the construction or laying of said underground conduits, tubes, pipes, conductors, cables and wires, no street, alley, lane or road shall be opened, or the paving broken into, for a greater distance than five hundred (500) feet at any one time, and that no section of five hundred (500) feet shall be kept open for a longer period than five (5) days; and said opening or trench shall not be of a greater width than two (2) feet, and as the work progresses the paving shall be promptly relaid, and the street, alley, lane or road put in good condition.

SECT. 3. Prior to making an opening in any street, alley, lane or road for the laying of conduits, tubes, or pipes for electrical conductors, cables or wires, the corporation, firm or person desiring to lay the same shall make application in writing to the department of police and fire-alarm telegraph, and shall file plans and specifications with said department, showing the location, route and length of the proposed conduits, pipes or tubes, and on the issuance of a certificate to the effect that the route or routes and plans and specifications meet with the approval of the superintendent of the police and fire-alarm telegraph, the chief engineer and surveyor and the chief commissioner of highways; thereupon the chief commissioner of highways shall have authority to issue the necessary permit, on compliance with the provisions of section 9 of this ordinance, for the opening of such street, alley, lane or road, as set forth in the applica-
22 tions and plans as are proposed to be occupied. In addition to filing the plans and specifications as hereinbefore provided, duplicates of the same shall also be filed in the department of highways and surveys, and neglect on the part of the applicant to file such papers on the opening of any street, alley, lane or road, without a permit having been first obtained, shall forfeit the right of any corporation, firm or person, to use or occupy any street, lane, alley or road. The work of laying underground conduits, tubes, pipes, electrical conductors, cables and wires shall be under the direction and to the satisfaction of the superintendent of the police and fire-alarm telegraph, who at all times shall have free and unobstructed access to the conduits, tubes, pipes, electrical conductors or cables, for the purpose of inspecting the same, or making connections therewith for wires or conductors in use or to be used by the city.

SECT. 4. That all corporations, firms or persons occupying any street, alley, lane or road, with underground conduits, tubes, pipes, cables, electrical conductors or wires, shall be liable for all damages to gas and water mains, services and sewers, connections to sewers, and also for any damages caused by the opening of trenches, or condition of the streets, alleys, lanes or roads resulting from the laying of the conduits, tubes, pipes, electrical conductors, cables or wires, or making connection for which the city of Philadelphia

would otherwise be liable; and the bond provided in sec-
23 tion 9 of this ordinance shall contain a provision to that effect.

SECT. 5. That when the city of Philadelphia may desire to use or occupy any of the wires or conductors in any of the conduits, tubes, pipes or cables, for police, fire-alarm or other municipal purposes, the corporation, firm or person, to whom privileges have heretofore, or shall hereafter be granted, for the laying of underground conduits, tubes, pipes, electrical conductors, cables or wires, shall furnish the superintendent of the police and fire-alarm telegraph with one and not more than three conductors or wires, upon thirty days' notice to any such corporation, firm or person, free of any cost to said city. The superintendent of police and fire-alarm telegraph to have the whole and absolute control of such electrical conductors or wires as he shall elect to use for the purpose named.

SECT. 6. That all corporations, firms or persons having telegraph, telephone, or electric lighting wires, electrical conductors, or cables on telegraph poles belonging in whole or in part to the city of Philadelphia, or on any other poles or fixtures, or over housetops, or in any way suspended above ground or placed underground, shall, in writing, on or before the first Monday of April, eighteen hundred and eighty-three (1883) and annually thereafter, on or before the second Monday of December, certify under oath to the superintend-
ent of the police and fire-alarm telegraph the actual number
24 of wires, location, and the miles of wire and electrical conductors, whether suspended singly or in cable, tubes, pipes or conduits, above ground or underground, owned, leased or controlled by them in the city of Philadelphia. Failure to make such a return within the time provided for in this ordinance shall subject the offenders to a penalty of fifty (50) dollars per day until such return is made.

SECT. 7. That on all conductors or wires suspended above ground, excepting such as are used or owned by the city of Philadelphia, an annual payment of five (5) dollars per mile or any part thereof in length for conductors for electrical lighting purposes for each and every wire or conductor, and of two (2) dollars and fifty (50) cents per mile or part thereof in length of wires or conductors for each and every wire or conductor used or to be used for telegraphic, telephonic, or other purposes; and on all wires or conductors placed underground excepting such as are used or owned by the city of Philadelphia, an annual payment of two (2) dollars and fifty (50) cents per mile or any part thereof in length for conductors or wires for electrical lighting purposes for each and every wire or conductor, and one (1) dollar per mile or part thereof in length of conductors or wires for each and every wire or conductor used or to be used for telegraphic, telephonic, or other purposes, shall be paid to the city treasurer on or before the first Monday of May, 1883, and annually thereafter, in advance on or before the first Monday
25 of January. Failure to make payment as required within the time herein specified shall subject the offenders to a penalty of fifty (50) dollars per day for each and every day thereafter

until payment is made. All penalties provided for in this ordinance shall be recovered as like penalties are now by law recoverable.

SECT. 8. That an annual license charge of five (5) cents per running foot on all underground conduits, tubes or pipes for electrical conductors not exceeding twelve (12) inches in diameter, be made, and on all other conduits, tubes or pipes for like purpose, exceeding twelve (12) inches in diameter, an annual license charge of ten (10) cents per running foot be made payable to the city of Philadelphia, at the same time and under the same provisions as are provided in section 7, for the payment of charges for conductors and wires.

SECT. 9. That any corporation, firm or person shall, before erecting or laying any conduits, tubes, pipes, cables, electrical conductors or wires, give a bond and warrant of attorney, with good and sufficient security in real estate, to be filed of record, or Government, State or city bonds, to the city of Philadelphia, in the sum of twenty thousand (20,000) dollars, conditioned, that they shall properly relay and pave all openings made by it or them, and thereafter keep in repair the paving over said openings, and that they will make return and pay the annual license charge for underground conduits,
26 tubes, and pipes, including all the electrical conductors and wires contained in said conduits, tubes, pipes or cables, as well as the annual license charge for all overhead wires, cables or conductors, as hereinbefore provided, and will comply with the provisions of this ordinance and of all other ordinances now in force or hereafter to be passed, regulating the introduction, use, maintenance, taxation or license charges of telegraph, telephone, electrical conduits, conductors, wires or cables in the city of Philadelphia. The said bond shall be approved by and filed with the city solicitor, and a certificate of such approval and filing shall be furnished to the chief commissioner of highways before he shall issue a permit for the opening of any street, alley, lane or road, and the corporation, firm or person shall also pay to the city treasurer the sum of fi-ty (50) dollars, for the publication of the ordinance authorizing it or them to lay such conduit, tube, pipe, conductor, wire or cable.

SECT. 10. That if any underground conduit company or individual should at any time dispose of any of the franchises granted by any ordinance of councils, or consolidate with any other company, the company so selling or consolidating shall forfeit all rights and privileges granted by such ordinance, and shall be liable to, and shall pay to, the city of Philadelphia a penalty of twenty-five thousand (25,000) dollars, to be sued out and collected by the city
27 solicitor; the company or individuals buying from or consolidating with aforesaid individuals or companies shall be liable and shall pay to the city of Philadelphia the sum of twenty-five thousand (25,000) dollars, to be sued out and collected as hereinbefore prescribed.

SECT. 11. That any corporation, firm or person erecting or laying any conduits, tubes, pipes, cables, electrical conductors or wires, shall erect or lay such conduits, tubes, pipes, cables, electrical conductors or wires clear of all other pipes.

SECT. 12. That the ordinance entitled "An ordinance to regulate

the introduction and use of underground conduits, electric cables and wires for electrical conductors in the streets of the city of Philadelphia, and to provide for charges for overground wires," approved June 21, 1882, as well as all other ordinances or parts of ordinances inconsistent herewith, be, and the same are hereby repealed; except so far as any penalties have been heretofore incurred by reason of non-compliance by any firm, corporation or person with the provision of any such ordinance for which purpose said ordinance shall remain in force.

Approved the thirtieth day of March, A. D. 1883.

SAMUEL G. KING,
Mayor of the City of Philadelphia.

28 (Endorsed.)

Served the Atlantic and Pacific Telegraph Company by giving January 4, 1892 a true and attested copy of the within writ to W. B. Gill superintendent of said company and making known to him the contents thereof.

So answers

PETER SAYBOLT, *Deputy Sheriff.*
HORATIO P. CONNELL, *Sheriff.*

29 THE CITY OF PHILADELPHIA *vs.* ATLANTIC AND PACIFIC TELEGRAPH COMPANY. } C. P. No. 4, Dec. Term, 1891. No. 319.

SIR: Enter my appearance for the defendant in the above case.

READ & PETTIT,
Attorneys for Defendant.

To proth'y C. P.

(Endorsed:) 319 Dec. term 1891 C. P. No. 4 City of Philadelphia *vs.* Atlantic & Pacific Telegraph Company. Order to enter appearance Filed 21 Jan. 1892 J. Briggs pro proth'y Read & Pettit.

30 CITY OF PHILADELPHIA *vs.* ATLANTIC & PACIFIC TELEGRAPH CO. } C. P. No. 4, December Term, 1891. No. 319.

And now, to wit, this — day of —— A. D. 1892, it appearing to the court that the defendant in the above cause is a corporation of the State of New York and is a citizen thereof, and that the controversy involves a sum exceeding the sum of two thousand dollars, exclusive of interest and costs, and that the said cause is removable unto the circuit court of the United States for the eastern district of Pennsylvania, it is ordered and decreed that the said defendant be, and hereby is, authorized and permitted to remove the said cause from the court of common pleas of the city and county of Philadelphia, to the circuit court of the United States for the eastern district of Pennsylvania, as in its petition prayed.

(Endorsed:) 319 Dec. T. 1891 C. P. No. 4 City *v.* Atlantic & Pacific Tel. Co. Order for removal Read & Pettit Filed Feb'y 27, 1892 C. H. White.

31 In the Court of Common Pleas No. 4 for the County of Philadelphia, of December Term, 1891.

CITY OF PHILADELPHIA
vs.
THE ATLANTIC AND PACIFIC TELEGRAPH COMPANY. } No. 319.

To the honorable the judges of the said court:

The petition of the Atlantic and Pacific Telegraph Company respectfully represents:

Your petitioner is a corporation duly organized under the laws of the State of New York and a citizen thereof; said corporation was so organized for telegraph purposes and owns controls and operates lines of telegraph in various States of the United States for the communication of intelligence by electricity, including lines of telegraph within the State of Pennsylvania, and including the telegraph poles and wires within the city of Philadelphia, to recover for the license fees upon which the above suit is brought.

The matter in dispute in the above cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, to wit, the sum of three thousand seven hundred and fifteen dollars as will more fully and at large appear by reference to the statement filed therein.

Your petitioner desires to remove the said cause from this
32 court to the circuit court of the United States for the eastern district of Pennsylvania, being the district within which the said city of Philadelphia is situate, and offers herewith its bond with good and sufficient security, to wit, one in the sum of five hundred dollars, conditioned as provided in the act of Congress in such case made and provided, and therefore prays your honorable court for an order allowing it to remove the said cause and to proceed no further in said suit.

And it will ever pray &c.

THE ATLANTIC & PACIFIC
TELEGRAPH CO.,
By THOS. T. ECKERT,
Vice-President.

[SEAL.] A. R. BREWER, *Secretary.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Thomas T. Eckert being duly sworn according to law deposes and says that he is a vice-president of The Atlantic and Pacific Telegraph Company, the petitioner above named, and that the facts set forth in the foregoing petition are true.

(S'g'd) THOS. T. ECKERT.

Sworn to and subscribed before me this 16th day of January A. D. 1892.

GEO. H. FEAROUS,
[SEAL.] *Notary Public, New York County.*

33 Know all men by these presents, that the Atlantic and Pacific Telegraph Company as principal and Wm. B. Gill as surety are held and firmly bound unto the City of Philadelphia in the sum of five hundred dollars, lawful money of the United States, to be paid to the said City of Philadelphia, its certain attorney successors or assigns, to which payment well and truly to be made we do hereby bind ourselves our successors, heirs, executors and administrators jointly and firmly by these presents.

Sealed with our seals, dated the eighteenth day of January A. D. 1892.

The condition of this obligation is such that,

Whereas, the said City of Philadelphia has brought a certain suit in the court of common pleas No. 4 for the county of Philadelphia, as of December term 1891, No. 319, against the said Atlantic and Pacific Telegraph Company.

And whereas the said Atlantic and Pacific Telegraph Company desires to remove the said cause from the said court of common pleas No. 4 of the county of Philadelphia to the circuit court of the United States for the eastern district of Pennsylvania and has filed its petition in said court of common pleas for that purpose.

Now, therefore, if the said Atlantic and Pacific Telegraph Company shall enter in the said circuit court of the United States for the eastern district of Pennsylvania on the first day of its
34 next session a copy of the record in said suit and pay all costs that may be awarded by said circuit court, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise to be and remain in full force and virtue.

THE ATLANTIC AND PACIFIC TELEGRAPH CO.,
By THOS. T. ECKERT, *Vice-President.*

Sealed and delivered in the presence of
[SEAL.] A. R. BRUNER, *Sec'y.*

CITY AND COUNTY OF PHILADELPHIA, *ss:*

William B. Gill being duly sworn according to law deposes and says that he is the surety in the foregoing bond and that he is worth at least five hundred dollars over and above his just debts and liabilities and that he is possessed of property within the county of Philadelphia liable to execution to the value of five hundred dollars, over and above the amount exempt by law.

(S'g'd) WM. B. GILL.

Sworn to and subscribed before me this 18th day of January A. D. 1892.

H. V. SICKEL,
Notary Public.

[SEAL.]

35 (Endorsed:) 319 Dec. T. 1891 C. P. No. 4 The City of Philadelphia *vs.* The Atlantic & Pacific Telegraph Co. Petition for removal to U. S. circuit court. Read & Pettit. Filed Jan. 18, 1892.

36 COMMONWEALTH OF PENNSYLVANIA, } *ss:*
Philadelphia County, }

I, Wm. B. Mann, prothonotary of the court of common [SEAL.] pleas, No. 4 in and for said county, certify that the foregoing is a full and correct copy of the whole record of the case herein stated, wherein City of Philadelphia — plaintiff and Atlantic & Pacific Telegraph Company defendant, as the same remains of record before the said court, at No. 319 of December term, A. D. 1891.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, the 2d day of March A. D. 1892.

F. H. SMITH,
Pro Prothonotary.

(Endorsed:) 340 Oct. sess. 1891. C. C. U. S. City of Philadelphia *vs.* Atlantic & Pacific Telegraph Co. Exemplification of record from court of common pleas No. 4 of Philadelphia county. Read & Pettit. Filed Mar. 3, 1892 Samuel Bell, clerk.

37 THE CITY OF PHILADELPHIA *vs.* THE ATLANTIC AND PACIFIC TELEGRAPH CO. } C. P. No. 4, December T., 1891. No. 319.

CITY AND COUNTY OF PHILADELPHIA, *ss:*

W. B. Gill being duly sworn according to law deposes and says that he is the superintendent of The Atlantic and Pacific Telegraph Company, defendant in the above cause, and that the said defendant has a just full and true defense to the whole of the plaintiff's claim of the following nature and character, to wit:

As to the sum of fifty-seven and 50/100 dollars claimed for attachments to city poles that the defendant has paid the plaintiff the same in cash.

That the said defendant has already paid unto the Commonwealth of Pennsylvania all taxes upon the value of said poles and wires as included in and represented by its capital stock and upon the gross receipts derived from the use thereof, as provided by the laws of said State and which have been assessed thereon.

And deponent further says that the said defendant is a corpora-

tion duly organized under the laws of the State of New York with power to construct, maintain and operate lines of telegraph in and through the various States and Territories of the United States and that it did on or about the 19th day of March 1897 duly accept the provisions of the act of Congress approved the 24th day of
38 July 1866 entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military and other purposes" and on the 19th day of March 1867 did file its written acceptance of the restrictions and obligations required by said act of Congress with the Postmaster General of the United States, and that it did by virtue and under the authority thereof at the time for which the said license fees are sought to be recovered, to wit, from the first day of January A. D. 1885 hitherto and still doth lawfully own, control, maintain and operate lines of telegraph within the State of Pennsylvania, of which the said wires and poles erected and maintained within the limits of the city of Philadelphia aforesaid and the license fees upon which are sought to be recovered in the above cause form a part, connecting with and forming parts of lines of telegraph extending between various States of the United States and the Territories thereof for the communication of intelligence by electricity.

And deponent avers that said poles and wires were during all the time aforesaid used and operated for the transmission, by electricity, of intelligence to and from the said city of Philadelphia from and to other cities and States without the State of Pennsylvania and situate within the other States and Territories of the United States, which said communication of intelligence is commerce between the States within the meaning of the Constitution of the United
39 States, and that the said license fees so sought to be imposed by the said ordinances of the city of Philadelphia are so imposed by it for the purpose of producing, and would produce, revenue to the said city of Philadelphia over and above the cost of regulating and supervising the said telegraph poles and wires mentioned and the cost of issuing licenses therefor and that the said fees and charges are unreasonable and more than ten times the cost of regulating and supervising the said poles and wires and issuing licenses therefor and are, therefore, a tax upon the said poles and wires upon which they are so sought to be imposed and that the said ordinances are void and of no effect because the said city of Philadelphia has no authority to impose a tax thereon and because the same are in conflict with that provision of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations and among the several States.

All which he avers and expects to be able to prove upon the trial of the said cause.

W. B. GILL.

Sworn to and subscribed before me this 23rd day of February A. D. 1898.

[SEAL.] ALFRED J. WILKINSON,
Notary Public.

(Endorsed:) 340 Oct. sess. 1891 C. C. U. S. City of Philadelphia vs. Atlantic & Pacific Tel. Co. Affidavit of defense. Filed Mar. 3, 1892 Samuel Bell, clerk. Read & Pettit.

40 CITY OF PHILADELPHIA *vs.* ATLANTIC & PACIFIC TELEG. CO. } U. S. C. C., Oct., '91. 340.

Enter my appearance for the pl'ff.

JOHN L. KINSEY, *City Sol'r*,
Per E. SPENCER MILLER.

(Endorsed:) Atlantic and Pacific Tel. Co. U. S. C. C. Oct. '91 340 Præcipe for appearance Kinsey Filed Mar. 5, 1897, Samuel Bell, clerk.

41 CITY OF PHILADELPHIA *vs.* ATLANTIC & PACIFIC TEL. CO. } C. C. U. S., Oct. Sess., 1891. No. 340.

The defendant above named pleads non-assumpsit, payment, with leave, etc.

READ & PETTIT,
B.,
Att'ys for Defendant.

To clerk U. S. C. C.

(Endorsed:) 340 Oct. sess. 1891 C. C. U. S. City of Philada. v. Atlantic & Pacific Tel. Co. Pleas Read & Pettit Filed Mar. 11, 1897, Samuel Bell, clerk.

42 U. S. Circuit Court, October Sessions, 1892.

CITY OF PHILADELPHIA *vs.* ATLANTIC & PACIFIC TELEGRAPH COMPANY. } No. —.

Statement of Claim.

The City of Philadelphia files this its statement against the Atlantic and Pacific Telegraph Company for a certain cause of action which it has against the said company, as follows:

The defendant company is a corporation organized under the laws of the State of New York. It conducts the business of delivering messages by electrical current. For the purpose of its said business it maintained telegraph poles and wires in the city of Philadelphia throughout the years respectively named, according to the particular statement hereinafter set forth. It also maintained and used wires on city poles and made attachments for the said wires thereon.

On the 6th day of January, 1881, the councils of the city of Philadelphia, with the approval of the mayor of the said city, shown subsequently by his official signature to the bill, enacted an ordinance

imposing a charge upon every telegraph company maintaining poles in the city of Philadelphia, *in* one dollar per annum on each pole.

A true copy of the said ordinance is attached hereto as
43 "Exhibit A."

On the 30th day of March, 1883, the said city councils, with like approval of the mayor of said city, enacted a certain ordinance whereby a charge *in* two dollars and fifty cents ($2.50) per mile of wire was imposed upon every telegraph company doing business in the city of Philadelphia, for all wires maintained upon poles therein. A true copy of said ordinance is attached hereto as "Exhibit B."

The number of poles maintained by the said company, and of miles of wire maintained by it in the respective years, were as follows:

Year.	Poles maintained.	Miles of wire.	
1885	312	134 at $2.50 ...	$335.00
1886	312	144 " " ...	360.00
1887	312	147 " " ...	367.50
1888	303	145 " " ...	362.50
1889	303	145 " " ...	362.50
1890	293	14 " " ...	35.00
1891	293	15 " " ...	37.50
	2128		$1860.00
			2128.00
			$3988.00

Wherefore, said company was indebted to the city of Phila-
44 delphia on the first days of the years 1885, 1886, 1887, 1888, 1889, 1890, and 1891, and on the first Mondays of the said years, in the sums hereinbefore stated respectively. Said defendant company neglected and refused to pay same, though frequently asked so to do by the city of Philadelphia. Wherefore, the said company is indebted to the city of Philadelphia in the total sum of $3988.00, with interest on the respective portions thereof from said respective dates at which the same was payable and of right should have been paid.

Wherefore this plaintiff brings this its suit.

CHAS. F. WARWICK,
Mayor of Philadelphia.

STATE OF PENNSYLVANIA, }
City & County of Phila., } ss:

Charles F. Warwick, being duly sworn according to law says, that he is mayor of the city of Philadelphia, and that the facts set forth in the above statement are true.

CHAS. F. WARWICK.

Sworn and subscribed before me this seventh day of March, A. D. 1898.

HIRAM HORTER, JR.,
[SEAL.] *Notary Public.*

45 EXHIBIT A.

An ordinance to regulate the erection and maintenance of telegraph poles in the corporate limits of the city of Philadelphia.

Whereas, great inconvenience and annoyance have been occasioned to property-owners by the placing of telegraph poles in front of their premises.

And whereas, the lives and property of citizens travelling upon the public streets and highways have been imperilled by the erection and maintenance of inadequate or unsound telegraph poles thereon, so that it has become necessary to establish a system for the proper inspection of such poles, and for the regulation of the erection and maintenance thereof; therefore,

SECTION 1. The select and common councils of the city of Philadelphia do ordain, That whenever permission shall have been granted by councils to any corporation, firm, or individual, to construct a line of telegraph which requires the erection of poles in or upon any of the public streets or highways within the corporate limits of the city of Philadelphia, it shall be the duty of such corporation, firm, or individual, before any pole shall be erected, to submit to the superintendent of the police and fire-alarm telegraph a
46 written application specifying the number and size of poles intended to be erected, and designating the places where the same are intended to be erected, and if no objection be made hereto it shall be the duty of the said superintendent of the police and fire-alarm telegraph to issue a license to the said applicant for the erection of the specified poles at the designated places of insertion. In case of objections being made to the whole or any part of such application, it shall be the duty of the superintendent of the police and fire-alarm telegraph to hear the same and to grant the license either in accordance with the application or with such conditions and modifications to secure the purposes of this ordinance as the case may require.

No pole shall be newly erected without the license of the superintendent of the police and fire-alarm telegraph shall have been previously obtained therefor as provided in this section, and for every license so granted there shall be paid to the city treasurer, for the use of the city, the sum of five (5) dollars per pole.

SECT. 2. It shall be the duty of the superintendent of the police and fire-alarm telegraph to cause a thorough and careful inspection to be made, at least once in every year, of all telegraph or telephone poles erected within the corporate limits of the city of Philadelphia, and if any pole shall be found defective or dangerous from any cause, he shall notify the corporation, firm or individual
47 owning such pole, who shall forthwith replace the same with a sound pole; and if the said owner neglect or refuse to replace such defective pole within forty-eight hours after receiving such notification, he or they shall be liable to a fine of five (5) dollars for each and every day during which said neglect or refusal shall continue, to be collected as debts of like amount are now by law recoverable.

SECT. 3. All telegraph poles now erected, or hereafter to be erected, in the city of Philadelphia, which are or shall be owned by any corporation, firm, or individual, shall be designated by the names or initials of such owner, and each of said poles shall bear a distinctive number, together with the names or initials and number shall be legibly marked with oil paint upon the poles so designated. It shall be the duty of every such owner or owners, on or before the first Monday of February, and annually thereafter on the first Monday of January in each and every year, to make application to the superintendent of the police and fire-alarm telegraph for a license to maintain the poles theretofore erected for the ensuing year, specifying the poles so to be maintained by their designation, as provided for in this section, and the superintendent of the police and fire-alarm telegraph shall issue a license to such applicant which
48 shall authorize the maintenance of the poles designated in the application, only for the period of one year from the first day of January next ensuing the date of said application, and no longer; and the charge for issuing such license shall be the sum of one (1) dollar for each and every pole authorized to be maintained thereby, and shall be paid to the city treasurer for the use of the said city.

SECT. 4. On and after the first day of January, A. D., 1881, no telegraph pole shall be maintained within the corporate limits of the city of Philadelphia without an annual license for the maintenance thereof shall have been previously granted for the same, in accordance with the provisions of section 3 of this ordinance; any privilege heretofore granted by resolution or ordinance for the erection and maintenance of poles for telegraphic or telephonic purposes be, and the same are, hereby repealed. Any person or persons violating the provisions of this section shall be liable to a fine of fifty (50) dollars for each and every telegraph pole so maintained without license, to be recovered as debts of like amount are now by law recoverable.

SECT. 5. Upon complying with the provisions and requirements of this ordinance the privileges heretofore granted to such individuals, companies, or corporations by resolution or ordinance shall not be in any way affected. The councils of the city of Phila-
49 delphia, however, reserves the right to revoke by ordinance

any of the privileges mentioned in this or any other ordinance or resolution.

JOS. L. CAVEN,
President of Common Council.

Attest: JOSEPH H. PAIST,
Clerk of Select Council.

JOHN McCULLOUGH,
President pro Tem. of Select Council.

Approved this sixth day of January, anno Domini one thousand eight hundred and eighty-one. (A. D. 1881).

WILLIAM S. STOKLEY,
Mayor of Philadelphia.

50 EXHIBIT B.

An ordinance to regulate the introduction and use of underground conduits, wires and cables for electrical conductors in the streets of the city of Philadelphia, and to provide for charges for underground, overground or overhead wires, and to repeal an ordinance entitled "An ordinance to regulate the introduction and use of underground conduits, electrical cables and wires for electrical conductors, in the streets of the city of Philadelphia, and to provide for charges for overground wires," approved June 21, 1882.

SECTION 1. The select and common councils of the city of Philadelphia do ordain, That all corporations, firms and persons to whom permission has heretofore, or which may hereafter be granted, for running or laying underground conduits, tubes or pipes for electrical conductors, or cables, or wires, or all corporations, firms and persons to whom permission has heretofore, or which may hereafter be granted, for the erection of poles, fixtures, cables, wires and conductors in or over the streets or housetops in the city of Philadelphia, shall conform to the requirements of this general ordinance.

SECT. 2. That no street, alley, lane or road in the city of Philadelphia shall be broken or occupied by any corporation, firm or person, for the purpose of laying down conduits, tubes or
51 pipes for electrical conductors, cables or wires, unless authority by ordinance be first obtained. That during the construction or laying of said underground conduits, tubes, pipes, conductors, cables and wires, no street, alley, lane, or road shall be opened, or the paving broken into, for a greater distance than five hundred (500) feet at any one time, and that no section of five hundred (500) feet shall be kept open for a longer period than five (5) days; and said opening or trench shall not be of a greater width than two (2) feet, and as the work progresses the paving shall be promptly relaid, and the street, alley, lane or road put in good condition.

SECT. 3. Prior to making an opening in any street, alley, lane or road for the laying of conduits, tubes, or pipes for electrical conductors, cables or wires, the corporation, firm or person desiring to

lay the same shall make application in writing to the department of police and fire-alarm telegraph, and shall file plans and specifications with said department, showing the location, route and length of the proposed conduits, pipes or tubes, and on the issuance of a certificate to the effect that the route or routes and plans and specifications meet with the approval of the superintendent of the police and fire-alarm telegraph, the chief engineer and surveyor, and the chief commissioner of highways; thereupon the chief commis-
52 sioner of highways shall have authority to issue the necessary permit, on compliance with the provisions of section 9 of this ordinance, for the opening of such street, alley, lane or road, as set forth in the applications and plans and specifications *as set forth in the applications and plans* as are proposed to be occupied. In addition to filing the plans and specifications as hereinbefore provided, duplicates of the same shall also be filed in the department of highways and surveys, and neglect on the part of the applicant to file such papers on the opening of any street, alley, lane or road, without a permit having been first obtained, shall forfeit the right of any corporation, firm or person, to use or occupy any street, lane, alley or road. The work of laying underground conduits, tubes, pipes, electrical conductors, cables and wires shall be under the direction and to the satisfaction of the superintendent of the police and fire-alarm telegraph, who at all times shall have free and unobstructed access to the conduits, tubes, pipes, electrical conductors or cables, for the purpose of inspecting the same, or making connections therewith for wires or conductors in use or to be used by the city.

SECT. 4. That all corporations, firms or persons occupying any street, alley, lane or road, with underground conduits, tubes, pipes, cables, electrical conductors or wires, shall be liable for all damages to gas and water mains, services and sewers, connections to sewers, and also for any damages caused by the opening of trenches,
53 or condition of the streets, alleys, lanes or roads resulting from the laying of the conduits, tubes, pipes, electrical conductors, cables or wires, or making connection for which the city of Philadelphia would otherwise be liable; and the bond provided in section 9 of this ordinance shall contain a provision to that effect.

SECT. 5. That when the city of Philadelphia may desire to use or occupy any of the wires or conductors in any of the conduits, tubes, pipes or cables, for police, fire-alarm or other municipal purposes, the corporation, firm or person, to whom privileges have heretofore, or shall hereafter be granted, for the laying of underground conduits, tubes, pipes, electrical conductors, cables or wires, shall furnish the superintendent of the police and fire-alarm telegraph with one and not more than three conductors or wires, upon thirty days' notice to any such corporation, firm or person, free of any cost to said city. The superintendent of police and fire-alarm telegraph to have the whole and absolute control of such electrical conductors or wires as he shall elect to use for the purpose named.

SECT. 6. That all corporations, firms or persons having telegraph,

telephone, or electric lighting wires, electrical conductors, or cables on telegraph poles belonging in whole or in part to the city of Philadelphia, or on any other poles or fixtures, or over housetops, or in any way suspended above ground or placed underground
54 shall, in writing, on or before the first Monday of April, eighteen hundred and eighty-three (1883), and annually thereafter, on or before the second Monday of December, certify under oath to the superintendent of the police and fire-alarm telegraph the actual number of wires, location, and the miles of wire and electrical conductors, whether suspended singly or in cable, tubes, pipes or conduits, above ground or underground, owned, leased or controlled by them in the city of Philadelphia. Failure to make such a return within the time provided for in this ordinance shall subject the offenders to a penalty of fifty (50) dollars per day until such return is made.

SECT. 7. That on all conductors or wires suspended above ground, excepting such as are used or owned by the city of Philadelphia an annual payment of five (5) dollars per mile or any part thereof in length of conductors for electrical lighting purposes for each and every wire or conductor, and of two (2) dollars and fifty (50) cents per mile or part thereof in length of wire or conductors for each and every wire or conductor used or to be used for telegraphic, telephonic, or other purposes; and on all wires or conductors placed underground excepting such as are used or owned by the city of Philadelphia, an annual payment of two (2) dollars and fifty (50) cents per mile or any part thereof in length for conductors or wires for electrical lighting purposes for each and every wire or conductor, and one (1) dollar per mile or part thereof in length,
55 of conductors or wires for each and every wire or conductor used or to be used for telegraphic, telephonic, or other purpose, shall be paid to the city treasurer on or before the first Monday of May, 1883, and annually thereafter, in advance on or before the first Monday of January. Failure to make payment as required within the time herein specified shall subject the offenders to a penalty of fifty (50) dollars per day for each and every day thereafter until payment is made. All penalties provided for in this ordinance shall be recovered as like penalties are now by law recoverable.

SECT. 8. That an annual license charge of five (5) cents per running foot on all underground conduits, tubes or pipes for electrical conductors not exceeding twelve (12) inches in diameter, be made, and on all other conduits, tubes or pipes for like purpose, exceeding twelve (12) inches in diameter, an annual license charge of ten (10) cents per running foot be made payable to the city of Philadelphia, at the same time and under the same provisions as are provided in section 7, for the payment of charges for conductors and wires.

SECT. 9. That any corporation, firm or person shall, before erecting or laying any conduits, tubes, pipes, cables, electrical conductors or wires, give a bond and warrant of attorney, with good and sufficient security in real estate, to be filed of record, or Government, State or city bonds, to the city of Philadelphia, in the sum of twenty

thousand (20,000) dollars, conditioned, that they shall properly relay and pave all openings made by it or them, and
56 thereafter keep in repair the paving over said openings, and that they will make return and pay the annual license charge for underground conduits, tubes, and pipes, including all the electrical conductors and wires contained in said conduits, tubes, pipes or cables, as well as the annual license charge for all overhead wires, cables or conductors, as hereinbefore provided, and will comply with the provisions of this ordinance and of all other ordinances now in force or hereafter to be passed, regulating the introduction, use, maintenance, taxation or license charges of telegraph, telephone, electrical conduits, conductors, wires or cables in the city of Philadelphia. The said bond shall be approved by and filed with the city solicitor, and a certificate of such approval and filing shall be furnished to the chief commissioner of highways before he shall issue a permit for the opening of any street, alley, lane or road, and the corporation, firm or person shall also pay to the city treasurer the sum of fifty (50) dollars, for the publication of the ordinance authorizing it or them to lay such conduit, tube, pipe, conductor, wire or cable.

SECT. 10. That if any underground conduit company or individual should at any time dispose of any of the franchises granted by any ordinance of councils, or consolidate with any other company, the company so selling or consolidating shall forfeit all
57 rights and privileges granted by such ordinance, and shall be liable to, and shall pay to, the city of Philadelphia a penalty of twenty-five thousand (25,000) dollars, to be sued out and collected by the city solicitor; the company or individuals buying from or consolidating with aforesaid individuals or companies shall be liable and shall pay to the city of Philadelphia the sum of twenty-five thousand (25,000) dollars, to be sued out and collected as hereinbefore prescribed.

SECT. 11. That any corporation, firm or person erecting or laying any conduits, tubes, pipes, cables, electrical conductors or wires, shall erect or lay such conduits, tubes, pipes, cables, electrical conductors or wires clear of all other pipes.

SECT. 12. That the ordinance entitled "An ordinance to regulate the introduction and use of underground conduits, electric cables and wires for electrical conductors in the streets of the city of Philadelphia, and to provide for charges for overground wires," approved June 21, 1882, as well as all other ordinances or parts of ordinances inconsistent herewith, be, and the same are, hereby repealed; except so far as any penalties have been heretofore incurred by reason of non-compliance by any firm, corporation or person with the
58 provision of any such ordinance for which purpose said ordinance shall remain in force.

Approved the thirtieth day of March, A. D. 1883.

SAMUEL G. KING,
Mayor of the City of Philadelphia.

(Endorsed:) U. S. C. C. Oct. '91 340. Phila. *vs.* Atlantic & Pacific Tel. Co. Rule to show cause why the statement filed should

not be amended according to this form by substitution hereof. I accept service of above rule for hearing. March —, 1898. Read & Pettit B. March 8, 1898. Upon the understanding that the amendment is not objected to the rule is both granted & made absolute as of this date. Geo. M. Dallas, J. E. Spencer Miller John L. Kinsey. Filed Mar. 16, 1898 Samuel Bell, clerk, per G. B. Jr.

59 U. S. Circuit Court, October Sessions, 1891.

CITY OF PHILADELPHIA
vs.
ATLANTIC AND PACIFIC TELEGRAPH COMPANY. } No. 340.

And now, to wit, April 16th 1901, by leave of the court, defendant pleads as to so much of the plaintiff's claim in the above-entitled cause as includes taxes on poles and wires for the year 1885 that the same is barred by the statute of limitations.

READ & PETTIT,
Att'ys for Defendant.

(Endorsed:) 340 October sess. 1891 U. S. C. C. City of Philadelphia *v.* Atlantic & Pacific Tel. Co. Plea. Read & Pettit, for def't. Filed April 17, 1901. Samuel Bell, clerk H. R.

60 And afterwards to wit on the 17th day of April, 1901, a jury being called come to wit, as follows:—

W. G. Heilman	Amos G. Chambers
Morris Trupp	James Tully
John R. Wiggins	Peter W. Hofer
Chas. E. Rauch	John B. Kendig
Wm. Trimble	Harry G. Lenhart
John Loitz	Francis S. Pleasanton

who were duly sworn &c. to try the issue joined &c.

And afterwards to wit on the 18th day of April 1901, the jurors aforesaid upon their oaths and affirmations aforesaid respectively do say that they find for plaintiff and assess the damages at seven thousand two hundred and fifty-three $\frac{92}{100}$ dollars.

61 In the Circuit Court of the United States for the Eastern District of Pennsylvania, October Sessions, 1891.

CITY OF PHILADELPHIA, Plaintiff,
vs.
ATLANTIC AND PACIFIC TELEGRAPH COMPANY, Defendant. } No. 340.

Be it remembered, that in the said October sessions A. D. 1891 came the said plaintiff into the said court, and impleaded the said defendant in a certain plea of assumpsit, &c.; in which the said plaintiff declared (*pro ut* narr.,) and the said defendant pleaded (*pro ut* pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the Honorable John B. McPherson, justice of the said court, at Philadelphia, on Wednesday and Thursday, the 17th and 18th days of April, A. D. 1901, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly empanelled (*pro ut* list of jurors), at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid im-
62 panelled to try the said issue being so called, came and were then and there in due manner chosen and sworn or affirmed, to try the said issue; and upon the trial the counsel of the said plaintiff and defendant offered evidence to maintain their respective issues as follows, and the learned court did charge the jury as follows:

63 U. S. C. C. of Pa., Oct. Term, 1891.

CITY OF PHILADELPHIA
vs.
ATLANTIC AND PACIFIC TEL. CO. } 340.

Before McPherson, J., and a jury.

PHILADELPHIA, PA., WEDNESDAY, *April* 17, 1901.

Appearances.

E. S. Miller, Esq., for plaintiff.
Messrs. Read and Pettit, for defendant.
(Mr. Pettit, counsel for defendant, files a plea of the statute of limitations, as regards the tax for the year 1885.)
Mr. MILLER: I offer in evidence the ordinance of January 6th, 1881, page 1, of the Book of Ordinances for that year *Pro ut* same.

(*Copy of Ordinance, January 6th*, 1881.)

An ordinance to regulate the erection and maintenance of telegraph poles in the corporate limits of the city of Philadelphia.

Whereas, great inconvenience and annoyance have been occasioned to property-owners by the placing of telegraph poles
64 in front of their premises.
And whereas the lives and property of citizens travelling upon the public streets and highways have been imperilled by the erection and maintenance of inadequate or unsound telegraph poles thereon, so that it has become necessary to establish a system for the proper inspection of such poles, and for the regulation of the erection and maintenance thereof; therefore,
SECTION 1. The select and common councils of the city of Philadelphia do ordain, That whenever permission shall have been granted by councils to any corporation, firm or individual, to construct a line of telegraph which requires the erection of poles in or

upon any of the public streets or highways within the corporate limits of the city of Philadelphia, it shall be the duty of such corporation, firm, or individual, before any pole shall be erected, to submit to the superintendent of the police and fire-alarm telegraph a written application specifying the number and size of poles intended to be erected, and designating the places where the same are intended to be inserted, and if no objection be made hereto it shall be the duty of the said superintendent of the police and fire-alarm telegraph to issue a license to the said applicant for the erection of the specified poles at the designated places of insertion. In case of objections being made to the whole or any part of such application, it shall be the duty of the superintendent of police and fire-alarm telegraph to hear the same and to grant the license either in accordance with the application or with such conditions and modifications to secure the purposes of this ordinance as the case may require.

No pole shall be newly erected without the license of the superintendent of the police and fire-alarm telegraph shall have been previously obtained therefor as provided in this section, and for every license so granted there shall be paid to the city treasurer, for the use of the city, the sum of five (5) dollars per pole.

SECT. 2. It shall be the duty of the superintendent of the police and fire-alarm telegraph to cause a thorough and careful inspection to be made, at least once in every year, of all telegraph or telephone poles erected within the corporate limits of the city of Philadelphia, and if any pole shall be found defective or dangerous from any cause, he shall notify the corporation, firm or individual owning such pole, who shall forthwith replace the same with a sound pole; and if the said owner neglect or refuse to replace such defective pole within forty-eight hours after receiving such notification, he or they shall be liable to a fine of five (5) dollars for each and every day during which said neglect or refusal shall continue, to be collected as debts of like amount are now made by law recoverable.

SECT. 3. All telegraph poles now erected, or hereafter to be erected, in the city of Philadelphia, which are or shall be owned by any corporation, firm, or individual, shall be designated by the name or initials of such owner, and each of said poles shall bear a distinctive number, together with the names or initials, and number shall be legibly marked with oil paint upon the poles so designated. It shall be the duty of every such owner or owners, on or before the first Monday of February and annually thereafter on the first Monday of January, in each and every year, to make application to the superintendent of the police and fire-alarm telegraph for a license to maintain the poles theretofore erected for the ensuing year, specifying the poles so to be maintained by their designation, as provided for in this section, and the superintendent of the police and fire-alarm telegraph shall issue a license to such applicant which shall authorize the maintenance of the poles designated in the application, only for the period of one year from the first day of January next ensuing the date of said application, and no longer; and the charge for issuing such license

shall be the sum of one (1) dollar for each and every pole authorized to be maintained thereby, and shall be paid to the city treasurer for the use of the said city.

SECT. 4. On and after the first day of January, A. D. 1881, no telegraph pole shall be maintained within the corporate limits of the city of Philadelphia without an annual license for the maintenance thereof shall have been previously granted for the same, in accordance with the provisions of section 3 of this ordinance; any privilege heretofore granted by resolution or ordinance for
67 the erection and maintenance of poles for telegraphic or telephonic purposes be, and the same are, hereby repealed. Any person or persons violating the provisions of this section shall be liable to a fine of fifty (5–) dollars for each and every telegraph pole so maintained without license, to be recovered as debts of like amount are now by law recoverable.

SECT. 5. Upon complying with the provisions and requirements of this ordinance the privileges heretofore granted to such individuals, companies, or corporations by resolution or ordinance shall not be in any way affected. The councils of the city of Philadelphia, however, reserves the right to revoke by ordinance any of the privileges mentioned in this or any other ordinance or resolution.

JOS. L. CAVEN,
Pres't of Common Council.

Attest: JOSEPH H. PAIST,
Clerk of Select Council.

JOHN McCULLOUGH,
President pro Tem. of Select Council.

Approved this sixth day of January, anno Domini one thousand eight hundred and eighty-one (A. D. 1881).

WILLIAM S. STOKLEY,
Mayor of Philadelphia.

68 Also the ordinance of March 30th, 1883, page 68, of the Book of Ordinances for that year *Pro ut* same.

(*Copy of Ordinance, March 30th*, 1883.)

An ordinance to regulate the introduction and use of underground conduits, wires, and cables for electrical conductors in the streets of the city of Philadelphia, and to provide for charges for underground, overground or overhead wires, and to repeal an ordinance entitled "An ordinance to regulate the introduction and use of underground conduits, electrical cables, and wires for electrical conductors in the streets of the city of Philadelphia, and to provide for charges for overground wires," approved June 21, 1882.

SECTION 1. The select and common councils of the city of Philadelphia do ordain, That all corporations, firms and persons to whom permission has heretofore, or which may hereafter be granted, for running or laying underground conduits, tubes or pipes for electri-

cal conductors, or cables, or wires, or all corporations, firms and persons to whom permission has heretofore, or which may hereafter be granted, for the erection of poles, fixtures, cables, wires and conductors in or over the streets or housetops in the city of Philadephia, shall conform to the requirements of this general ordinance.

SECT. 2. That no street, alley, lane or road in the city of Philadelphia shall be broken or occupied by any corporation, firm
69 or person, for the purpose of laying down conduits, tubes or pipes for electrical conductors, cables or wires, unless authority by ordinance be first obtained. That during the construction or laying of said underground conduits, tubes, pipes, conductors, cables and wires, no street, alley, lane or road shall be opened, or the paving broken into, for a greater distance than five hundred (500) feet at any one time, and that no section of five hundred (500) feet shall be kept open for a longer peried than five (5) days and said opening or trench shall not be of a greater width than two (2) feet, and as the work progresses the paving shall be promptly relaid, and the street, alley, lane or road put in good condition.

SECT. 3. Prior to making an opening in any street, alley, lane or road for the laying of conduits, tubes or pipes for electrical conductors, cables or wires, the corporation, firm or persons desiring to lay the same shall make application in writing to the department of police and fire-alarm telegraph, and shall file plans and specifications with said department, showing the location, route and length of the proposed conduits, pipes or tubes, and on the issuance of a certificate to the effect that the route or routes and plans and specifications meet with the approval of the superintendent of the police and fire-alarm telegraph, the chief engineer and surveyor, and the chief commissioner of highways shall have authority to issue the necessary permit, on compliance with the provisions of sec-
70 tion 9 of this ordinance, for the opening of such street, alley, lane or road, as set forth in the applications and plans, as are proposed to be occupied. In addition to filing the plans and specifications as hereinbefore provided, duplicates of the same shall also be filed in the department of highways and surveys, and neglect on the part of the applicant to file such papers on the opening of any street, alley, lane or road, without a permit having been first obtained, shall forfeit the right of any corporation, firm or person, to use or occupy any street, alley, lane or road. The work of laying underground conduits, tubes, pipes, electrical conductors, cables and wires shall be under the direction and to the satisfaction of the superintendent of the police and fire-alarm telegraph, who at all times shall have free and unobstructed access to the conduits, tubes, pipes, electrical conductors or cables, for the purpose of inspecting the same, or making connections therewith for wires or conductors in use or to be used by the city.

SECT. 4. That all corporations, firms or persons occupying any street, alley, lane or road with underground conduits, tubes, pipes, cables, electrical conductors or wires, shall be liable for all damages to gas and water mains, services and sewers, connections to sewers, and also for any damages caused by the opening of trenches, or

conditions of the streets, alleys, lanes or roads resulting from the laying of the conduits, tubes, pipes, electrical conductors, cables or wires, or making connection for which the city of Philade-
71 phia would otherwise be liable and the bond provided in section 9 of this ordinance shall contain a provision to that effect.

SECT. 5. That when the city of Philadelphia may desire to use or occupy any of the wires or conductors in any of the conduits, tubes, pipes or cables, for police, fire-alarm or other municipal purposes, the corporation, firm or person, to whom the privileges have heretofore, or shall hereafter be granted, for the laying of underground conduits, tubes, pipes, electrical conductors, cables or wires, shall furnish the superintendent of the police and fire-alarm telegraph with one and not more than three conductors or wires, upon thirty days' notice to any such corporation, firm or person, free of any cost to said city. The superintendent of police and fire-alarm telegraph to have the whole and absolute control of such electrical conductors or wires as he shall elect to use for the purpose named.

SECT. 6. That all corporations, firms or persons having telegraph, telephone, or electric lighting wires, electrical conductors, or cables on telegraph poles belonging in whole or in part to the city of Philadelphia, or on any other poles or fixtures, or over housetops, or in any way suspended above ground or placed under ground, shall, in writing, on or before the first Monday of April, eighteen hundred and eighty-three (1883), and annually thereafter, on or before the second Monday of December, certify under oath to the superintendent of the police and fire-alarm telegraph the actual number
72 of wires, location, and the miles of wire and electrical conductors, whether suspended singly or in cable, tubes, pipes or conduits, above ground or under ground, owned, leased or controlled by them in the city of Philadelphia. Failure to make such a return within the time provided for in this ordinance shall subject the offenders to a penalty of fifty (50) dollars per day until such return is made.

SECT. 7. That on all conductors or wires suspended above ground, excepting such as are used or owned by the city of Philadelphia, an annual payment of five (5) dollars per mile or any part thereof in length for conductors, for electrical lighting purposes for each and every wire or conductor, and of two (2) dollars and fifty (50) cents per mile or part thereof in length of wires or conductors for each and every wire or conductor used or to be used for telegraphic, telephonic, or other purposes; and on all wires or conductors placed under ground, excepting such as are used or owned by the city of Philadelphia, an annual payment of two (2) dollars and fifty (50) cents per mile or any part thereof in length for conductors or wires for electrical lighting purposes for each and every wire or conductors, and one (1) dollar per mile or part thereof in length of conductors or wires for each and every wire or conductor used or to be used for telegraphic, telephonic or other purposes, shall be paid to the city treasurer on or before the first Monday of May, 1883, and annually thereafter, in advance, on or before the

first Monday of January. Failure to make payment as re-
73 quired within the time herein specified shall subject the offenders to a penalty of fifty (50) dollars per day for each and every day thereafter until payment is made. All penalties provided for in this ordinance shall be recovered as like penalties are now by law recoverable.

SECT. 8. That an annual license charge of five (5) cents per running foot on all underground conduits, tubes or pipes for electrical conductors not exceeding twelve (12) inches in diameter, and on all other conduits, tubes or pipes for like purposes, exceeding twelve (12) inches in diameter, an annual license charge of ten (10) cents per running foot be made payable to the city of Philadelphia, at the same time and under the same provisions as are provided in section 7, for the payment of charges for conductors and wires.

SECT. 9. That any corporation, firm or person, shall, before erecting or laying any conduits, tubes, pipes, cables, electrical conductors or wires, give a bond and warrant of attorney, with good and sufficient security in real estate, to be filed of record, or Government, State or city bonds, to the city of Philadelphia, in the sum of twenty thousand (20,000) dollars, conditioned, that they shall properly relay and pave all openings made by it or them, and thereafter keep in repair the paving over said openings, and that they will make return and pay the annual license charge for undergound conduits, tubes and pipes, including all the electrical conductors and wires contained in said conduits, tubes, pipes or cables, as
74 well as the annual license charge for all overhead wires, cables or conductors, as hereinbefore provided, and will comply with the provisions of this ordinance and of all other ordinances now in force or hereafter to be passed, regulating the introduction, use, maintenance, taxation or license charges of telegraph, telephone, electrical conduits, conductors, wires or cables in the city of Philadelphia. The said bond shall be approved by and filed with the city solicitor, and a certificate of such approval and filing shall be furnished to the chief commissioner of highways before he shall issue a permit for the opening of any street, alley, lane or road, and the corporation, firm or person shall also pay to the city treasurer the sum of fifty (50) dollars, for the publication of the ordinance authorizing it or them to lay such conduit, tube, pipe, conductor, wire or cable.

SECT. 10. That if any underground conduit company or individual should at any time dispose of any of the franchises granted by any ordinance of councils, or consolidate with any other company, the company so selling or consolidating shall forfeit all rights and privileges granted by such ordinance, and shall be liable to, and shall pay to, the city of Philadelphia a penalty of twenty-five thousand (25,000) dollars, to be sued out and collected by the city solicitor; the company or individuals buying from or consolidating with aforesaid individuals or companies shall be liable and shall pay to the city of Philadelphia the sum of twenty-five (25,000) dol-
75 lars, to be sued out and collected as hereinbefore prescribed.

SECT. 11. That any corporation, firm or person erecting or laying any conduits, tubes, pipes, cables, electrical conductors or wires, shall erect or lay such conduits, tubes, pipes, cables, electrical conductors or wires clear of all other pipes.

SECT. 12. That the ordinance entitled "An ordinance to regulate the introduction and use of underground conduits, electric cables and wires for electrical conductors in the streets of the city of Philadelphia, and to provide for charges for overground wires," approved June 21, 1882, as well as all other ordinances or parts of ordinances inconsistent herewith, be, and the same are, hereby repealed; except so far as any penalties have been heretofore incurred by reason of non-compliance by any firm, corporation or person with the provision of any such ordinance, for which purpose said ordinance shall remain in force.

Approved the thirtieth day of March, A. D. 1883.

SAMUEL G. KING,
Mayor of the City of Philadelphia.

76 Also the ordinance of August 5th, 1886, page 243, of the Book of Ordinances for that year *Pro ut* same.

(*Copy of Ordinance, August 5th*, 1886.)

An ordinance regulating the laying and construction of underground wires, electrical conductors, conduits, cables, and tubes in the city of Philadelphia.

SECTION 1. The select and common councils of the city of Philadelphia do ordain, That every company, corporation, firm, or individual desiring to lay or construct a line or lines of telegraph, telephone, electric light wires, electrical conductors, conduits, cables or pneumatic tubes under any of the streets or highways of the city shall first file with the board of highway supervisors an application in writing, accompanied by a general plan and specification, showing the location of the proposed work, and so far as shall be practicable that of all structures existing under said streets or highways upon which they may desire to lay or construct their line or lines of wires, electrical conductors, conduits, cables, or tubes.

SECT. 2. In order to avoid the placing of unnecessary wires, electrical conductors, conduits, cables, or tubes on streets or highways already occupied by such, and to avoid interference with the
77 water, gas, and sewerage system of the city, the board of highway supervisors shall have authority to alter and change the route or plans submitted by any company, corporation, firm, or individual, as they may think for the best interests of the city; and upon the approval of a route and plan by the said board of highway supervisors, they shall cause said route and requirements to be drafted into the form of an ordinance to be submitted to councils for their approval or disapproval. The said ordinance shall be accompanied by plans approved by the board of highway supervisors.

SECT. 3. The board of highway supervisors are hereby authorized,

upon the passage of a resolution by councils, to grant permission to any company, corporation, firm, or individual to which privileges have been or may hereafter be granted for the construction of main lines of telegraph, telephone, electric light wires, electrical conductors, conduits, cables or pneumatic tubes, to lay or build branch lines therefrom not extending beyond three squares direct from the main lines, which privilege shall be revocable at any time by councils.

SECT. 4. The laying, construction, and maintenance of all wires, electrical conductors, conduits, tubes, or cables shall be under the supervision of the chief of the electrical department, and subject to his approval; and the same shall be laid under the rules and regulations of the board of highway supervisors.

78 SECT. 5. That every company, corporation, firm, or individual, to which privileges have been or may hereafter be granted for the laying or construction of a line or lines of wires, electrical conductors, conduits, cables or tubes, shall be liable for any injury or damages to gas, water mains, pipes, or sewers, by the opening of the streets, or the laying of their wires, electrical conductors, conduits, cables or tubes therein, and this condition shall be set forth in the bond provided for in section 11 of this ordinance.

SECT. 6. That whenever the city may desire to use or occupy any of the wires, electrical conductors, or cables for municipal purposes, the company, corporation, firm, or individual, to which the privilege has or shall hereafter be granted for laying or constructing such lines or branches, shall furnish three good working wires upon thirty (30) days' notice, to the electrical department, without any cost to the city.

SECT. 7. That whenever the city may desire to occupy or use a tube or chamber in any of the conduits or tubes which have heretofore been or may hereafter be laid by authority of councils, the company, corporation, firm, or individual, owning such conduits or tubes shall, upon thirty (30) days' notice from the chief of the electrical department, furnish said department, free of cost or charge to the city, at least one tube or chamber in such conduits or tubes:

Provided, that this section shall not be construed to apply to
79 companies, corporations, firms or individuals laying wires who have complied with section 6 of this ordinance, of which compliance the chief of the electrical department shall be judge.

SECT. 8. That every company, corporation, firm or individual, to which privileges have been granted for the laying of pneumatic tubes, shall, upon notice from the chief of the electrical department, supply free service to the city of Philadelphia and the departments thereof, between such points as or may be reached by their system.

SECT. 9. Every company, corporation, firm or individual, to which privileges have heretofore or may hereafter be granted, for the laying of wires, electrical conductors, conduits, cables or tubes, under any of the streets or highways of the city, shall on or before the first Monday of November, in each and every year, certify under oath to the chief of the electrical department, the number and location of

wires, electrical conductors, conduits, cables or tubes, and the miles of wire laid underground, by authority of ordinance. Upon failure to make such a return on the part of any company, corporation, firm or individual within thirty days from the time specified, the privileges granted by this or any other ordinance, or by the board of highway supervisors, under resolution of councils, shall cease and determine, and the chief of the electrical department shall thereupon cause the wires, electrical conductors, conduits, cables or tubes to be either disconnected from the buildings or removed from the streets, and any expense or cost resulting
80 therefrom shall be charged to and against such company, corporation, firm or individual, and the city solicitor is directed and authorized to collect the cost from such company, corporation, firm, or individual for said disconnection or removal, by proceeding upon the bond as required to be given by them, as provided in section 11 of this ordinance. And should the amount of said bond be insufficient to cover the costs and charges, he is further authorized and directed to take other proceedings to recover the same.

SECT. 10. The chief of the electrical department shall at all times have free and unobstructed access to the wires, conduits, cables, electrical conductors or tubes for the purpose of inspecting the same or making connections therewith for wires or conductors in use or to be used by the city.

SECT. 11. That upon the passage of an ordinance granting any company, corporation, firm or individual, privileges under this ordinance, or any ordinance now in force, or to be hereafter passed, relating to or regulating underground wires, electrical conductors, conduits, cables, pipes or tubes, the said company, corporation, firm or individual shall, before exercising any privileges thereunder, give a bond, to be drawn and approved by the city solicitor, and to be entered of record, in the sum of five thousand (5,000) dollars, conditioned that they will properly relay and pave all openings made by them, and thereafter keep in repair for a period of
81 three years the paving over said openings, and that they will comply with the provisions of section 5 of this ordinance for a like period of three years. And a certificate of such approval shall be furnished by the city solicitor to the board of highway supervisors before a permit shall be issued for the opening of any street or highway for the purposes named; and the company, corporation, firm or individual to which any privilege is granted shall, before the issuance of a permit, pay fifty (50) dollars to the city treasurer, for printing of the ordinance granting the privileges asked.

SECT. 12. Should any company, corporation, firm or individual to which privileges have heretofore been or shall hereafter be granted for the laying of underground wires, electrical conductors, conduits, cables, or tubes, dispose of any of the franchises granted by ordinance, or lease to, consolidate, or merge with any other company, corporation, firm, or individual, they shall forfeit all rights and privileges granted to them by the city of Philadelphia, and upon satisfactory proof being furnished to the chief of the electrical department and

the city solicitor, they are hereby authorized and directed to take similar action against the offending company, corporation, firm or individual, as provided for in section 9 of this ordinance.

SECT. 13. All ordinances providing for license charges upon underground wires, electrical conductors, conduits, cables, or tubes,
82 as well as all other ordinances or parts of ordinances inconsistent herewith be, and the same are, hereby repealed.

Approved the fifth day of August, A. D. 1886.

WILLIAM B. SMITH,
Mayor of Philadelphia.

83 Also the return of the Atlantic & Pacific Telegraph Company, of poles and wires maintained by them during the years in question.

Plaintiff rests.

Defendant's Evidence.

Mr. PETTIT: I offer in evidence a certified copy of the charter of the Western Union Telegraph Co., to which the line of poles and wires in question belonged.

Also the acceptance by the defendant company, the Atlantic & Pacific Telegraph Co., of the act of Congress of 1866, filed on March 19, 1867.

Also the circular of the Postmaster General, fixing the Government rates to be paid for messages transmitted by this company in compliance with that act.

WILLIAM B. GILL, having been duly sworn, was examined as follows:

By Mr. PETTIT:

Q. What officer, if any, are you of the Atlantic & Pacific Telegraph Company?

A. Superintendent.

Q. And for what district or what location?

A. From the city of Washington or the Potomac river, to
84 the Allegheny mountains.

Q. And north how far?

A. As far as the New York State line.

Q. Are you a similar officer of the Western Union Telegraph Company?

A. Yes, sir.

Q. In point of fact, in the years mentioned in this suit, from 1885 to 1891, were or not the lines of the Atlantic & Pacific Telegraph Company owned and operated by the Western Union Telegraph Company?

A. Yes, sir.

Q. Have you been in charge of the wires and poles upon which this tax was laid during the years in question, that is to say, 1885 to 1891?

A. Yes, sir, continuously.

Q. Can you describe the route of those poles and wires? Do you know where they were located?

A. In the city of Philadelphia they were located on Second street, from Girard avenue to York; they went west on York to Sixth, and up Sixth around Hunting park, till they struck the old York road. In Philadelphia they were located on Ridge avenue to Girard avenue, and on Girard avenue west to the bridge, and they went beyond the bridge originally and that part of the line was given to the city of Philadelphia.

Q. Beyond the bridge?

85 A. Beyond the bridge—my recollection is we stopped at the east side of the bridge.

Q. For what business were those wires used?

A. They were used for the general business of the entire country, messages from all parts of the South, the North, the East and West, all going to Washington or New York and New Orleans, or cablegrams or Government messages. There are six of the wires in existence at the present time, running between Baltimore and Washington, which are used in the general business of the Government and of commercial business that originates at Washington or goes to or from it.

Q. Confine yourself to the poles and wires that were denominated Atlantic & Pacific poles and wires in the city of Philadelphia.

A. Yes, sir.

Q. In the years 1885 to 1891. I understand you to say that those wires were used for the transmission of business from the States north to the States south and to the States west and *vice versa?*

A. Yes, sir, any business that might originate in any part of the country.

Q. As well as to and from Philadelphia?

A. Yes, sir.

Q. During that time what regulations or supervision did the city of Philadelphia exercise over those poles and wires?

86 A. None. The supervision and regulation is looked after by the telegraph company itself. When we desire to take down a line of poles with wires on, we get a permit from the electrical department. If we desire to renew a line of poles, we get a permit from the electrical department, and then we get a permit for our line which is given once a year. That refers to the repairs or the maintenance of the line. I have copies of those in my pocket, if you desire them.

Q. Let me have them.

(Witness produces papers.)

Q. These appear to be for the year 1891. Were those of the previous years in the same form?

A. Yes, sir, the phraseology might have been a little different; the same thing in effect.

Q. The same general form?

A. Yes, sir.

Q. I find one here dated January 1, 1901, permit to the Western

Union Telegraph Company, to repair their overhead wires until December 31, 1901, unless otherwise ordered by the department. This permit is not good for the erection of additional wires or extension of line. Signed by the chief of the bureau.

A. That is a repair permit, or maintenance.

Q. Was that the form you had for those six or seven years in question?

87 A. As far as my recollection carries, that is the same form except, as I stated before, that the phraseology might have been somewhat different.

Q. The others appear to be special permits to renew specified wires, or to take down specified wires on poles.

A. Yes, sir.

Q. I suppose to erect specified wires on poles?

A. Yes, sir.

Q. Those permits you got besides those general yearly ones?

A. Yes, sir.

Q. How many would you get?

Mr. MILLER: I submit that is not important. Apparently the object in proving the number of permits given for repairs is to show that this company kept its wires and poles in good condition. But it has been decided that is not a ground for reducing the amount of the charge, inasmuch as the charge is properly based upon the supervision necessary for all the poles and wires in Philadelphia, whatever company they may belong to.

The COURT: We will receive the evidence for the present, and determine what effect it will have after.

Q. How many would you get?

A. I should judge we got about two a month.

Q. During all the time, the seven years in controversy,

88 who was the chief of the electrical bureau?

A. Mr. D. R. Walker.

Q. And is yet?

A. Yes, sir.

Q. When about was it that electric lights were introduced into the city of Philadelphia commercially so as to amount to any general use?

A. I think it was somewheres around 1883 or 1884. I am not positive of it.

Q. Prior to that time had there ever been any danger or trouble arising from the presence of telegraph poles and wires in Philadelphia?

A. None whatever.

Q. Since that time the trolley wires have also been introduced, have they not?

A. Yes, sir.

Q. And are they liable to produce any difficulty or danger or trouble with telegraph wires, if they come in contact?

A. So far as my knowledge goes, I should say yes. I have heard

it claimed that they do not, but I never like to get in contact with one of them.

Q. The electric light wires are insulated, are they not?

A. They are insulated when they are first erected, but that insulation wears off.

Q. And then they become dangerous?

Yes, sir.

89 Q. Or may become dangerous?

A. Yes, sir; contact with them is sure death.

Q. How about trolley wires; are they insulated or can they, in the nature of things, be insulated?

A. The trolley feed-wire, which carries the big current, they are underground. Of course their trolley wire, what is called the trolley wire, that is not insulated. That is where the trolley is.

Q. That necessarily has to be open?

A. Yes, sir.

Q. Is there any account kept by your company of the expense of the inspection and maintenance and repair of the lines of the company?

A. Yes, sir, a strict account kept and rendered every month and audited every month.

Q. Have you a statement showing what that expense is?

A. I had a statement made up, and I think the clerk brought it over.

Q. Is that a tabulated statement showing the yearly expense, and the average expense, for the seven years in controversy (handing witness paper)?

A. Yes, sir.

Cross-examination.

By Mr. MILLER:

Q. Suppose a wire of some other company falls over one of your wires, an arc-light wire for instance, falls on one of your wires, how soon do you find it out?

90 A. Almost immediately.

Q. Do you ever find it out before it gets that far?

A. No, sir, we cannot find it out before it gets that far.

Q. That is to say, if such a wire overhanging one of yours, and were to begin to sag and get nearer and nearer to one of yours, you would find it out pretty quickly after it touched yours?

A. No, sir, not exactly.

Q. Did you say just now you would not find it out until it got there?

A. I understood your question to be a broken wire, not a wire that was crossing or a suspended wire.

Q. I have your answer as to a broken wire. What is your answer as to a suspended wire?

A. A suspended wire we would likely find that out as we have done in numerous cases. We go and lift the wires up, or arrange with the electric light company to lift theirs up.

Q. You would be likely to find that out before it got as far as your wires?

A. Yes, sir.

Q. And you would go and stop it?

A. Yes, sir.

Q. How would you find it out?

A. By the eye.

Q. But not from your office at 10th and Chestnut, if it was
91 very far away?

A. No, sir. I am not employed for that. The linemen are employed for that.

Q. How many men have you employed for that in Philadelphia?

A. I thought maybe you would ask me that, as you always do, so I had a tabulated statement made here of the names.

Q. Give me the number. That will answer my question.

A. They are employed at different times. Some of them are not employed continuously.

Q. How many have you employed today?

A. The continuous ones are fourteen.

Q. How many have you employed today for that purpose?

A. I cannot answer you that question because there might be a dozen men put on extra today.

Q. How many men do you have in the employ of the company all the year round continuously, throwing out the extra ones?

A. An average of fourteen.

Q. I did not ask you anything about an average because an average includes extra ones. I want to know how many you have in steady employ.

A. Fourteen men.

92 Q. Is fourteen the average or is fourteen the number you always have?

A. Fourteen men in what you may term constant employ. In order to make this statement—a man might be sick. A man might be off, and another man in his place.

Q. Is fourteen the average or is fourteen the minimum?

A. Fourteen you might call it the minimum or maximum.

Q. What do you call it?

A. I call it the maximum.

Q. What is the minimum?

A. Fourteen.

Q. Fourteen is both the minimum and maximum?

A. Yes, sir.

Q. And also the average?

A. If you bring it up you make the average fourteen.

Q. Is fourteen the average?

A. I do not understand your question in the light you are putting it. Here is about thirty names here on this paper, taken from the records.

Q. How many men besides have you in the regular employ of the company?

A. Do you mean at all parts or just in the city of Philadelphia?

Q. In the city of Philadelphia. I do not mean your operators. I mean linemen. How many have you besides those fourteen?

A. We have those fourteen station linemen. We have men that are what we call in gangs, gangmen. They are always subject to call. They are working in the city of Philadelphia. The

93 men come from Lancaster or Harrisburg or Havre de Grace. They work in the city of Philadelphia, just according to the exigencies of the service.

Q. I would like to know how many more men than the fourteen you have, whose duty it is to look out for sagging wires, you have employed regularly in the city of Philadelphia to make repairs.

A. Those men I am talking about, the gangmen, they are not the men that look after sagging wires. That is the regular force of fourteen men.

Q. How many men have you besides, working all the time at repairs?

A. I cannot answer that question from memory.

Q. Where are those fourteen men located?

A. Different places around Philadelphia; some Broad & Chestnut; some at Tenth & Chestnut.

Q. How many stations have you?

A. We only have what we might term two stations, one at Broad & Chestnut, and the other at Tenth & Chestnut, because the men report to a man who does nothing else but look after and send them out over routes.

Q. Whatever the reason may be, it is a fact you have two stations?

A. Yes sir.

Q. Do those men always report at one or the other of those stations in the morning?

A. Yes, sir.

94 Q. Have you got the number divided between the two stations?

A. No, sir.

Q. What is their duty after they report?

A. Look after these lines.

Q. I suppose so, but how do they go about it? Are they sent out to a certain point when there is need of their work there? Is that the way they do their work?

A. That is part of the way they do their work.

Q. What is the rest of the way?

A. The rest of it is to look after the different sections of their lines.

Q. Please tell us how that is done.

A. I cannot tell you that, because I do not follow after them. A lineman is a man that patrols and goes over the lines, and if there is anything the trouble with them, he fixes it. I cannot tell you every footstep he takes.

Q. You do not understand me to ask you that?

A. That is the way I understand your question. I cannot understand it any other way.

Q. What I would like to know is, what the regulations may be

governing the action of those men outside of their duty to go to a specified point and make repairs.

A. To examine, look after and patrol their sections, that is their lines.

Q. How many sections have you in the city?

95 A. One on Front street.

Q. I ask you the number.

A. I cannot. I do not carry all this in my mind.

Q. You do not know the number?

A. No, sir. I know where they are all located.

Q. More like five or more like fifty?

A. I should say probably about eight or nine.

Q. Is there a man assigned to each section?

A. No, sir.

Q. What is approximately the length of line in each section?

A. That I could not answer without figuring it all out. I can tell you on one line, for instance, which I think is the longest line, from Front and Race to Front and Norris, where it takes the railroad. I should think that is about the longest line there is in the city.

Q. Please explain to the jury what the system of patroling you have is, if you have any system.

A. A man goes over the lines and examines them and reports the condition.

Q. You mean one man starts on January 1st to walk over all the lines in Philadelphia?

A. No, sir, I do not.

Q. Explain. Does each man have a section assigned him to take up at the beginning of the year?

A. No, sir, he does not; but the man that I explained to

96 you at the headquarters, he sends the men out.

Q. Who is that man?

A. Mr. Donnelly.

Q. Is that at Tenth & Chestnut?

A. Yes, sir.

Q. His headquarters?

A. Yes, sir.

Q. What is his system for sending the men out?

A. First, if he has any trouble he sends a man out on the trouble.

Q. If there is a repair at some specific place called for?

A. Yes, sir.

Q. What next?

A. If there is a pole that has to be moved in order to make way for a curb, where they are putting in a circular curb, if there has to be new curbing put in, and the poles have to be shifted out or in, he sends the men on that. Very seldom that occurs. I can hardly recollect the time. He has a man patrolling and looking after these lines. That is about as plain as I can make it for you. Just the same as if I asked you to walk up Tenth street, and you

were in the telegraph business, to look over that line and examine. That is all can be done.

Q. Do you mean this man will occasionally send one of the linemen to a particular stretch of street and asking him to ex-
97 amine the wire along that street?

A. I do not recollect saying occasionally. I said that was continuous service.

Q. I think you said it happens hardly once a year, or rarely; you could not recollect it.

A. Referring to the necessity of moving poles in the manner that I referred to, that is by new curbing and things of that kind.

Q. The other thing is frequent, you say sending a man to walk along a certain street?

A. That is what they are paid for, for that continuous service of looking after the section.

Q. Is it frequently?

A. Certainly.

Q. Can you tell us the system, because so far you have told us simply that this man Mr. Donnelly sends out a man to a particular street. I want to know whether you have any methodical system by which you secure a patrol-ing of the whole line within any definite time?

A. I do not understand what you mean. I am too obtuse for that.

Q. I did not say that. I will try to make it clear. You have told us that these fourteen men do two things. They go on special order to a place where repair is needed or change, and they patrol the line of the company. You have said that the man who has charge of the patrolling of the line is some one at Tenth and Chestnut street-, who very commonly sends a man to patrol
98 the line on a certain street between certain points. Now I would like to know whether there is any system for such work, or method which results in insuring that every part of the line within any definite period of time is patrolled.

A. Let me see if I understand your question. Do you want me to say whether a man goes from Front and Norris to Kensington depot on Monday, Tuesday, Wednesday or Thursday. Is that what you call definite?

Q. No, sir, I do not mean that. I want to know if there is any system which insures that all the lines will be patrol-ed in a given time.

A. Oh yes, for the reason——

Q. I did not ask you for the reason. I cannot explain it to you any more than I have. You have already made a beginning, I think. You have said yes, that there is a system.

A. Yes, sir.

Q. Which insures that all the line will be patrol-ed within a definite period of time. What is the definite period of time?

A. I will guarantee to say there is not a wire in trouble in Philadelphia today, showing the patrolling and the care.

Q. Will you tell us the definite period of time?

A. I cannot name the definite period of time. I told you it is continuous, but when I say continuous, it does not mean that
99 one man goes at ten o'clock and another one at eleven, and another one at twelve. We do not patrol lines in that way, and never did, and it was never done.

Q. Then I gather from your testimony there is no more system about patrolling than you have explained. Patrolling is done by your company, is that so?

A. That is all.

Q. Do you say that the danger in connection with electric wires began when electric light wires were hung in the city?

A. Yes, sir.

Q. After that there was danger, was there?

A. Yes, sir.

Q. Therefore there has been danger since 1883?

A. I am not sure that that is the year. That is only from memory?

Q. If it was the year when they began?

A. Yes, sir.

Q. The heavy-current wires are the arc-light wires, are they not?

A. Yes, sir.

Q. They run to 3000 volts?

A. Yes, sir, and I guess sometimes more.

Q. 500 volts is enough to kill a man?

A. No, sir, it takes about 1000.

Q. It depends upon conditions?

A. Yes, sir.

100 Q. Suppose the thing that I spoke of a minute ago happens, that arc-light wires sag and rest on one of your telegraph wires; suppose that the insulation of the electric light wire has become broken before the contact or is sawed away by the contact, what becomes of the current in the arc-light wire?

A. It may lead over our wire into our office and set it on fire.

Q. Is it likely to run along your line?

A. Yes, sir.

Q. When will it stop?

A. I cannot tell you that.

Q. Is it liable to go some hundreds of miles?

A. It has been claimed that it has done so. I do not know that of my own personal knowledge, but I have heard it claimed it does.

Q. Did I understand you to say that the city made no supervision of your wires or of electric wires in the city?

A. None that I am acquainted with.

Q. Do you know whether the police officers of the city are required, as part of their duty, to look out for crosses and out-of-place wires and dangerous telegraph poles?

A. No, sir. I do not know that positively. I have heard you make that statement and claim.

101 Q. I do not ask you to take it on my word. As a matter of fact you do not know it?

A. No, sir, I know they cannot do it. Therefore a man cannot do that which is impossible or impracticable.

Q. Do you know whether they have a direction to do it?

A. I think I know that from hearing Judge Beitler say so.

Q. The former director of public safety?

A. Yes, sir, I think I heard him say so.

Q. Against that you have your own judgment they cannot do it?

A. Not only judgment, but that is predicated on absolute knowledge.

Q. Are you aware, as a matter of fact, that overhead wires along curbs interfere with the handling of fire ladders?

A. I do not know that from personal knowledge. I only know that from hearing in the court here the testimony of several people who claim that. The fact of my long experience in the city of Philadelphia, commencing here as a messenger boy, and I could not refer you to a day where there was any interference by the overhead wires during any fire.

Q. You are not a fireman, are you?

A. No, sir, I am not a fireman.

Q. Have you known cases where a lot of wires in front of a portion of a building were cut in the work of putting out a fire?

102 A. I am not positive of that. My recollection is at one time, at the fire at the theatre on Walnut street, above Eighth, that the fire burned a pole down. I was at that fire getting our lines up, but I do not recollect the wires being cut.

Q. I understand the state of your information upon the subject to be, that you have no knowledge, you have no information to the effect that wires in front of buildings ever interfered with the fire service, and that you never knew a single instance where wires were cut, when fires were being put out, although you did know one case where wires were broken by a falling pole that had burned?

A. The wires were not broken; I did not say the wires were broken. I said it allowed the wires to drop down from the pole.

Q. That is all you know about it?

A. Yes, sir, I never go to fires. I am busy enough attending to other things.

Q. Have you any knowledge of the subject of ordinances considered by committees of the councils and passed at said councils, regulating this subject of electric wires in the city?

A. Yes, sir, I have a knowledge of those. I think I attended very near every meeting.

Q. Would you say that such city ordinances averaged a

103 dozen or twenty in the course of a year? I am speaking of that referring to the subject of private companies having electric wires in Philadelphia.

A. That I cannot answer, because I do not have knowledge of other companies.

Q. You know that some such ordinances have passed?

A. I only know of such ordinances that affected the Western Union or its system.

Q. You told us that a policeman could not look after a telegraph wire with any advantage. Please tell us why a policeman is incapable of doing that thing.

A. Because the necessary thing to do to ascertain the condition of a wire and to look after it is to climb the pole, and I know policemen do not climb poles nor shin up them.

Q. He does not have to climb a pole to find whether the pole is in a dangerous condition?

A. Not the pole, he does not.

Q. That much he can do. You will have to take back what you said that far, will you?

A. That much he can do, the same as he walks along and might see an ash barrel.

Q. He can do that. Let us come to the matter of wires. Can he or can he not see an arc-light wire that has sagged out of place and is getting dangerously near to one of your wires?

A. I doubt it very much.

Q. Is it because policemen have bad eyes or because no-
104 body can see the height of a telegraph pole?

A. Of course the distance is so great it requires experience. I could take you along the line and show you two wires, and you would say both crossed, and they would not be touching each other at all.

Q. Do you mean the ordinary man cannot see a telegraph wire at the height of a telegraph pole?

A. Not in the cities, like they are here. You can out in the country but you cannot in the city.

Q. You assert as a general thing, we here, if we go out in the street, cannot see the telegraph wires on the top of poles?

A. No, sir.

Q. Possibly to some of us that seems strange. Is there anything that you have to say in explanation of that statement?

A. Yes. When our men go after that, a cross, that would be two wires together, they have climbers on and go up the pole? When you get on the level of it, you can see it.

Q. I am asking about the possibility of seeing telegraph wires on the top of telegraph poles. Is there anything that you want to say in explanation of your statement just now, that in the city here we can-ot see that far?

A. Yes, sir.

Q. Have you anything to say in explanation of that?

105 A. No, sir, no more than to my knowledge you cannot do it without experience.

Q. Suppose a guy wire is attached to a pole, a pole going into the private property of an individual, perhaps, if there are such, or a trolley pole, although it would not be needed for its support, is it not possible for a police officer to notice whether such wires strung up are placed in a position where they are likely first to cross an arc-light wire, and then to cross one of your wires?

A. With a guy wire that is a different thing entirely because a guy wire is a guy rope made of wire, about seven strands, and of course that is an entirely different thing.

Q. A policeman can see that?

A. Yes, sir.

Q. Particularly if one end comes to the ground, the policeman can see that?

A. Undoubtedly, if it was on the ground.

Q. That much a policeman can do. He can look out for danger of that kind, can he not?

A. From the guy breaking?

Q. Yes, sir.

A. Yes, sir, he can do that. He would very seldom ever do it, though.

106 Q. Is it or is it not true that fire-escape boxes have wires coming down the pole, from the upper end, on the outside of the pole, not sunk in the pole, but on the outside?

A. I think in some cases it is so. I think the city has some on our poles.

Q. I mean fire-signal boxes.

A. Yes, sir.

Q. That is what you meant?

A. Yes, sir, but they are all insulated.

Q. You told us a little while ago that insulation did not always last. Is that true?

A. It does not always last. I would not make the statement that insulation put in this building and encased would not last. I was answering a supposed case of yours, whether it was going to do this thing and the other, and that talk of rubbing.

Q. Is it or is it not likely, that the insulation on a fire-signal wire would get broken so that it would fail to serve an emergency?

A. Not from my knowledge it would not here in Philadelphia, because the wires are kept by the city in too good a condition. Therefore I would unhesitatingly say it could not occur.

Q. Suppose a vehicle would come against such a wire, would that be liable to break the insulation?

A. No, sir, because the insulation is too high for the vehicle.

107 Q. You mean that wire coming down the pole does not come down as low as where it could be struck by a vehicle?

A. No, sir, I do not think so.

Q. What is the usual height of the fire-signal boxes?

A. I cannot answer that except to know that it is higher than a vehicle.

Q. Do I understand you to say that the electrical bureau performs no supervision?

A. Except that that I have named in issuing the permits.

Q. Have you heard Chief Walker testify to the contrary?

A. I have not that I recollect.

Redirect examination.

By Mr. PETTIT:

Q. Something has been said about these wires, patrolling the wires and so forth. If a telegraph wire becomes weakened, either

by rust or from any other cause, does it or not affect its conductivity?

A. Yes, sir, it affects its working capacity at once, which is its conductivity.

Q. Is or not that fact apparent to the operator?

A. It is apparent to what is termed the test operator, who uses a galvanometer on it to examine to see when, for instance if a wire had eighteen ohms' resistance, was to run up to fifty ohms' resistance, immediately there would be another one to take its place. That is not a broken wire; that is not broken.

108 Q. Of course when the wire is broken, that ends it?

A. Yes, sir, the instrument stops at once. The moment a break occurs anywhere, that moment the instrument stops.

Q. If the wire becoming weakened by rust, or from any other cause, the fact of its becoming weakened is apparent to the test operator before it becomes broken?

A. Yes, sir, and then that wire is patrolled and pieces of it cut out and brought in to show its general condition. For instance, they cut out a piece every twenty-five or thirty poles to see whether it was general or just in some particular place. The wire will last a great many years in one place, where it will not last in another. On the Pennsylvania railroad going west, a wire there will not last over eight years, while I had a piece brought over from the Bedford pike that was put there forty-five years ago, and it is apparently as good as the day it was put up.

Q. Then what does the company do as soon as the test operator finds that the working capacity of the wire is affected?

A. He sends that with the report to the superintendent. The superintendent has that wire renewed by taking out—not the man referred to by Mr. Miller, but gangmen.

Q. Does or not the conductivity or the working capacity of the wire become affected long before it becomes so weakened as to be in danger of breaking?

109 Objected to as leading.

(Question withdrawn.)

Q. State whether or not a wire may be strong enough to hold itself up, and yet be defective in conductivity.

A. Yes, it often occurs that a wire shows poor conductivity, and a physical examination of it discloses that the wire is in fair condition or what you may call good condition, but where the joints are made on the wire they have elongated some or rusted, and the leakage is in the joints. That is one of the methods of determining, and the other is called its physical examination, and — it is found that it has rusted, it is taken down and another wire put in its place.

Q. What I want to know is, whether a wire can become weakened to such an extent as to be in danger of falling, without its conductivity being affected.

A. Not in a general sense. It may, if it happens to have a factory joint in it that would be defective. That is the only thing. If it

happens to have a defective joint in it, made at the factory, where they are put together. The moment that wire commences to deteriorate its conductivity goes down. In other words, it is not as efficient, does not give as efficient service as it did when it was in proper shape.

Q. Is it or is it not a fact that the dangerous condition of a
110 wire that is operated by the Western Union Company would be known from the test office quicker and better than by external observation?

A. Undoubtedly.

Q. Something was said about the current being carried great distances in case of a cross with an electric light wire. About how often are the wires of the telegraph company grounded?

A. What with? Do you mean electric light wires?

Q. No, sir, the telegraph company wires, how often are they grounded?

A. I could not answer you that question.

Q. Could not answer it as a general proposition?

A. No, sir.

Q. The current from the electric light wire would not be carried beyond the point where the wire was grounded would it?

A. An electric light current of a wire coming from contact might go to ground, and it might go around the office and strike a dozen other wires, so that I could not answer your question. I have heard it stated that a wire crossed at Baltimore created a fire in Washington, but that did not come from positive knowledge of the parties who said it. It was only their thought about it. Another thing,
you could not tell which way a current is going to go. The
111 general supposition is that the earth is a reservoir for all electric currents, and, like lightning, the electric currents are all making their way to the earth. That seems to be the place they are seeking all the time, and yet sometimes it would take the longer distance on the wire, when they could have taken shorter ground.

Q. What is the ordinary number of poles and number of wires to a mile in the city of Philadelphia?

A. I should judge about thirty-seven. That is our usual calculation.

Q. Thirty-seven what?

A. Poles to a mile.

Q. About how many wires do the poles carry?

A. Some poles have a large number on, and others have a small number.

Q. What is the average in this city?

A. I should judge somewhere around twenty or twenty-five, I think there was, about, at the time of the Atlantic & Pacific. I think there is less now.

Recross-examination.

By Mr. MILLER:

Q. Did I correctly understand you to say that approaching dan-

gers from electric wires were more readily detected from the test office than by patrolling?

A. No, sir, I did not.

112 Mr. PETTIT: I offer in evidence that statement identified by the witness.

(Marked "Exhibit 1, April 17, 1901, M. F. M.")

Also statement compiled from the reports of the electrical bureau, showing the total amount of the license charges for poles and wires for telegraph, telephone and electric light companies in the city of Philadelphia, for the seven years in question.

(Marked "Exhibit 2, April 17, 1901, M. F. M.")

Also statement of the number of poles and miles of wire belonging to the city of Philadelphia, erected and maintained in the streets during the years 1885 to 1891, both inclusive.

(Marked "Exhibit 3, April 17, 1901, M. F. M.")

Also statement compiled from the reports of the chief of the electrical bureau, showing the general expenses of his office for the years 1885 to 1891, both inclusive.

(Marked "Exhibit 4, April 17, 1901, M. F. M.")

Mr. PETTIT: I want to read from the reports for the years in question in respect to this matter of permits.

I read the following from the report of the chief of the electrical bureau for the year 1886:

The department issued 250 permits during the year, for
113 the erection of poles, wires and general repairs to the lines of parties who were authorized by councils to construct and maintain telegraph, telephone and electric light wires for overhead and underground service, being a decrease of 136 from the issue of last year. This decrease was mainly caused by the position taken by councils against the overhead service and a determination that something must be done to prevent the accumulation of overhead wires and place them beneath the surface of the streets and the refusal of the department to issue permits except where necessity requires it. Permits were only issued during the year for the extension of the electric light service authorized by councils; no permits were issued for the extension of the telegraph and telephone pole lines.

I have no published copy of the report for the year 1885. The department has none.

I read now from the report of the chief of electric bureau for the year 1887, in this connection.

The bureau issued 146 permits during the year, for the erection of poles, wires and general repairs to the lines of parties who were authorized by ordinance to construct and maintain telegraph, telephone and electric light wires for overhead service, being a decrease of 104 from the issue of last year. This decrease was mainly
114 caused by the refusal of the bureau to issue permits except where necessity required it. The position taken by councils against the overhead service and a determination that something must be done to prevent the accumulation of overhead wires and

place them beneath the surface of the streets. Permits were only issued during the year for the extension of the electric light service authorized by councils. No permits were issued for the extension of the telegraph and telephone pole lines.

From the report of the same department for the year 1888:

"There were 161 permits issued during the year for the erection of poles and wires, and for general repairs to lines already erected, to those authorized by councils to maintain overhead electrical service; increase in the number issued of 15 over last year; the permits issued for the erection of new poles were only given for the extension of the electric light service for public lighting and for those authorized by ordinance to erect poles for their method of central distribution by means of underground wires, 219 applications for permits were approved by the chief for underground electrical companies to open the streets for the introduction of their service."

115 Report of the same bureau for the year 1889:

"There were 289 permits issued during the year for the erection of poles and wires and for the general repairs to lines already erected, to those erected by those authorized by councils to maintain overhead electric service, an increase in the number issued of 128 over last year; the permits issued for the erection of new poles were only given for the extension of the electric light service for public lighting, and for those authorized by ordinance to erect poles for their methods of central distribution by means of underground wires; 950 applications for permits approved for underground electrical companies to open the streets for the introduction of their service."

I have no report for the year 1890.

Report of the same bureau for the year 1891:

"The following will show the number of permits issued to each company, and the purposes for which they were granted." Then follows a tabulated statement showing 25 permits for the renewal of poles, 124 permits for the erection of new poles and posts, 270 permits for the running of new wire, 100 permits for the repairs and renewals of wire, eight permits for the removal of poles, seven

116 permits for the removal of wires, a total of 534 permits issued for overhead work, an increase of 298 over last year, due to the inauguration of new companies which had been granted privileges by councils to erect poles and wires along the highways. The following will show the number of permits issued to each company, and the purposes for which they were granted, for underground purposes. Repairs, 163 permits; house connections, 183 permits; main line, 3 permits; making a total of 349, a decrease of 108 from last year, and a total of 882 permits of all permits issued.

Defendant rests.

117 *Plaintiff's Evidence in Rebuttal.*

Mr. MILLER: By agreement, I desire to read the testimony of Abraham M. Beitler, taken on a former occasion, when very much the same questions were involved.

Mr. PETTIT: I do not object to the reading of the testimony. I object to the relevancy of it.

(Testimony read, as follows:)

ABRAHAM M. BEITLER sworn.

By Mr. MILLER:

Q. You are now judge of the court of common pleas No. 1 of the city of Philadelphia?

A. Yes.

Q. Prior to the time when you went on the bench, did you have any connection with the government of the city of Philadelphia?

A. I went on the bench in February, 1896, and prior to that time and from October, 1891, I was director of the department of public safety. Prior to that time, I scarcely know for how many years, from 1878 or 1879, I was in the law department of the city solicitor's office of the city of Philadelphia.

Q. As director of the department of public safety, what branches of the city government did you have charge of?

118 A. The department embraced the bureaus of police, fire, health, city property, building inspection, the electrical bureau and the fire marshal. The fire marshal was an officer of the department, but did not constitute a bureau. The others were bureaus presided over by bureau chiefs.

Q. During the period before the time when you were director of public safety, with what branches of the city government did your duties bring you in contact?

A. For three years or more prior to the time that I became director of public safety, I was first assistant in the office of the city solicitor, and, of course, he is the corporation counsel, and I had charge of the litigation of the city of Philadelphia, generally, and I had entire charge of the litigation of one court—the court of which I am now judge. I had the one court. Prior to that time I was second assistant.

Q. Had you, before you became director of public safety, while you were assistant city solicitor, a general knowledge of the duties and the workings of the various branches of the city government?

A. Yes, I had.

Q. Will you state to the court and jury what branch of the city government has the most intimate relations with the matter of poles and wires in the streets of the city?

119 A. The department, of course, is the department of public safety; but the bureau in that department that has the most to do with the subject is the electrical bureau; incidentally, and to an extent considerable, but not as great as the electrical

bureau, the police bureau has to do with it, and from the standpoint of inconvenience, the fire bureau has to do with the subject.

Q. Will you state to the court and jury what the duties of the bureau of electricity are in connection with the subject?

A. The electrical bureau of the city of Philadelphia is unlike, I think, the electrical bureau of any other city. It comprises all the branches of electric service, has charge of the telephone service of the city of Philadelphia, of the police system of the city of Philadelphia, including the patrol-box system and also of the fire-alarm system. It has, in addition to that, the entire charge of the erection, the renewal and the supervision of all the electrical construction, whether the city's or a company's, in locating wires, either underground or overhead.

Q. Will you state to the court and jury the part that the bureau of police play with regard to the subject of electric wires?

A. So far as concerns the wires that supply electric lighting, and only so far as reference to that is concerned, the city paying for the electric lighting, the city expects them to see that the city gets value under the contract, so far as concerns those wires and all
120 others, the policemen are inspectors. They are inspectors with regard to other matters as well as electric lighting. For instance, it is his duty to report anything which can or might result in harm to the municipality, to the citizens of the municipality, or to the travelers on the highway, whether in vehicles or on foot.

Q. Are you able to say whether there has been any more definite statement or definite instructions given to the police force with regard to the subject of wires and poles in particular?

A. I hardly know how to answer that. The police are required, and when I say "required" I mean it is laid down for them in their manual, which is their catechism by which they regulate their duties. It is laid down for them that they must report all matters that require the attention of the bureau of health, sanitary matters, all matters that require the attention of the department of public works in the matter of repairs to bridges, roadways, footwalks, or anything of that sort. They are required to report all structures over the highway that can result in harm, not only wires, not only poles, but trees and sign-posts, swinging signs, and anything that is out of order and requires attention. In urgent cases they are required to report by wire, and in less urgent cases by written report rendered through the lieutenant to the superintendent the next morning.

121 Q. What is that? (Paper shown witness.)

A. That is the form that is used in reporting the various matters that are noted at the foot of this blank. These reports, I may say, are brought in daily by the lieutenants, and upon roll call are handed to the superintendent of police, and after the superintendent of police has collected them, they are turned over to the director's office for distribution by him.

A. And what is this paper?

(Second paper handed witness.)

A. That is the same thing excepting it is larger, that is all. It a

lieutenant has a half dozen to report, he uses the smaller blank, and if he has a dozen or two he uses the larger one.

Q. And this note at the foot, "everything which requires repair should be noted, such as decaying trees, leaning telegraph poles, detached, broken, or sagging wires, swinging signs with broken supports, awning posts broken, stumps of trees or trees in the middle of the pavement," and so on, that note is for the instruction of the officers?

A. Of the patrolmen.

Q. You mentioned, I think, another branch of the department of public safety which had duties to perform relating to the
122 poles and wires?

A. That is the fire department. If I may be allowed to explain a little what is done when an alarm of fire comes in I can make that clearer.

Q. That branch of the department was under you?

A. Yes. All alarms of fire of course are transmitted electrically, and they all go to the electrical bureau no matter from what section of the city they come, they are transmitted to the police and to the fire bureaus. The fire bureau responds. If it is a first alarm, the company attached to that box go to the fire, and that alarm also brings a certain number of districts, that is police districts. It also is a summons to the electrical bureau to send their men to the scene of the fire. They go there for the protection of the city's overhead service, and also for the protection of the overhead service of other companies, to see that as little damage is done to the wire as is possible, and at the same time to let the fire bureau work with as little impediment as possible. The men in the fire bureau were, and I suppose still are, equipped with apparatus by which they may cut the wires with safety to themselves, a set of plyers the name of which Mr. Gill can give you better than I can, but they are insulated plyers, with which to cut wires in their road. If linemen are
123 upon the ground, and their services can be had at the instant, they are used, because they are more expert in that business, and can do it with less detriment to the overhead service than firemen, who are apt to clear things out of the road without regard to the structures that may be hurt by them.

Q. Are you able to state whether the presence of wires overhead on telegraph poles a little distance inside the curb line is any substantial interference with the work of the fire service?

A. I should say there was. I ought to add that it was not my custom to go to every fire, of course my duties were too onerous for that, but the larger fires that occurred while I was director of public safety I did attend, and of course I was always on the fire ground and inside of the fire lines.

Q. The present chief of the fire service is in court, I think?

A. Yes, sir.

(Cross-examined.)

By Mr. PETTIT:

Q. Before you became director you were in the city solic-
124 itor's office as you have said and had charge of the litigation; during that time, and before you were director had you any knowledge of the things about which you are now testifying, and in respect to the working of this department in relation to telegraph wires?

A. I will have to answer that this way, I had that knowledge that a lawyer would have of the conduct of his client's business, and especially that knowledge that would come to a lawyer who had no client to consult with. If a man in the law department wants to learn anything at all about an accident case, for instance or a suit for negligence against the city, he must go hunt up the men who under the department of bureaus has charge of that particular matter. Of course I had not a knowledge of these matters that I have spoken about going to fires, because I did not then go to fires.

Q. What I wanted to make clear to the court was that your testimony as director of public safety is confined necessarily to years other than the years 1889 and 1890 that are under consideration here now.

A. I cannot say whether the form of report that is used here was used prior to the time that I became director. I can say from the general knowledge of the matter that the police force in 1891 did report matters that were considered by them to be dangerous.
125 Whether their attention was as pointedly called to the matter of overhead wires I do not know.

Q. It was their business to report any obstruction in the highway, whether it was an ash barrel that was out there too long or beyond hours, or defects in the cleaning of the street, defects in the paving, and holes in the sidewalk or the curb line, or anything that was on the street either on the ground or underground so far as they could see, or overhead, never mind what it was, that might affect the public convenience.

A. The public safety.

Q. That was their duty before that form of report was devised just as much as it was afterwards?

A. Yes, I believe it was.

Q. That is the ordinary duty of a policeman. Now I understand that, barring that your own testimony as to what went on in relation to the electrical bureau relates to the time that you were director of public safety, and when it was your duty to officially know about it, does it not?

A. Well, no, I would not say that; I know that prior to 1891 the electrical bureau had a right under ordinances to issue permits, and we had linemen and inspectors, and I presume those linemen and inspectors inspected.

Q. You knew what the ordinance provided?
126 A. And I knew the force the office had in a general way.

Q. But the general conduct of the city's business that you have testified to you learned principally after you became director?

A. Yes, that is right.

Q. While you were director, or when you became director of public safety, can you state from recollection what the extent of the telegraph plant of the city of Philadelphia was?

A. No, I cannot; I would have to turn to the reports for that?

Q. Of course I do not expect you to remember exact details, but while you were director the city put up and maintained, and does maintain a very extensive plant, part of which it rents out, the part that it does not use it rents out, does it not?

A. The overhead construction you refer to?

Q. No, I refer to the underground.

A. Yes, the city began prior to the time I became director of public safety to bury its own wires, and after I became director of public safety councils were wise enough, I think, to afford the department an opportunity to lay larger conduits and rent some of the ducts of those conduits.

127 Q. Not larger ones but more of them?

A. More of them.

Q. You extended them larger?

A. I think the appropriations for underground conduits largely increased and were laid far in advance of the needs of the city, and I think today the city is deriving a very handsome revenue from the underground conduits.

Q. And it has also the largest system of public electric lighting of any city in the country, has it not?

A. I believe it has.

Q. And it attained that while you were chief?

A. Well, I do not know that; there has been a certain increase in that every year, whether it reached that distinction when I was director I do not know.

Q. Do not you know before you ceased to be director of public safety that the city of Philadelphia had more electric lights than New York and Chicago put together?

A. Yes, I think it had.

Q. And while you were director of public safety they built the trolley lines, did they not?

A. Yes, sir.

128 Q. Now, prior to the building of trolley lines and electric light lines did you ever hear of any danger whatsoever from a telegraph wire?

A. Well, electric lighting in the city of Philadelphia antedates by many years my becoming director of public safety.

Q. While you had charge of litigation?

A. Yes, while I had charge of the city's litigation, because the first electric light line was run in Philadelphia since I entered the law department of the city. I think, unless I am mistaken, that electric lighting was introduced in Philadelphia in the early eighties.

Q. My impression is that they were introduced and the first line was put up in 1881?

A. I would have said 1882 from recollection, but in 1882 I had no practical experience with regard to the subject at all.

Q. You had charge of the city's litigation, however, or some branch of it?

A. Well, I cannot say whether in 1882, or 1883, or 1884, or 1885 even, there were inconveniences felt from the erection of the arc-light wires.

Q. Did you ever have any litigation for the city out of a wire, for the conduct of electricity, whether telegraph or telephone, or
129 anything else, except where the damage was done by the trolley or an electric light wire?

A. That would require me to go over a recollection of a great many cases; I do not now recall any.

Q. Can you say that you can recollect any one?

A. I say I do not now recall any, but if my attention had been directed to that I could have given more thought to that, because I had charge of a great many electric cases while I was in the law department.

Q. The details of the extent of the city's telegraph lines, and the various points to which they reach, and so forth, are better known to the chief than to you?

A. Far better.

Q. You would prefer not to be bothered about that?

A. I could not answer the question anyhow except in a general way.

130 DAVID R. WALKER, having been duly sworn, was examined as follows:

By Mr. MILLER:

Q. What relation do you bear to the city government?

A. Chief of the electrical bureau.

Q. You have held that position how long?

A. Since 1883.

Q. Were you connected with the bureau previously?

A. Yes, sir, I have been over forty years.

Q. You are electrician, are you?

A. Yes, sir.

Q. You have full charge of everything, scientific and otherwise, connected with that bureau?

A. Yes, sir.

Q. Tell the court and jury whether there is any greater danger to the public in overhead wires than as to underground, and from underground wires.

A. Far greater risk.

Q. Mention the reasons that make the difference.

A. Underground wires are concealed in covered conduits where they cannot be interfered with, and not liable to contact with trolley or electric light wires or any other wires, and nobody can be injured

from wires underground other than where they are connected with overhead wires leading through the streets, coming in contact with those high potential wires, to electric light wires and trolley
131 wires.

Q. Are the overhead wires all supported on poles?

A. Yes, sir, mostly on buildings and poles.

Q. As a matter of fact, in your experience have any accidents occurred in the city of Philadelphia from overhead wires?

A. Yes, sir, many.

Q. Are those accidents injuries to properties, or what is their character?

A. Some cases they are, and mostly to life and injury, accidents such as killing and such as burning, showing, while in cases of electric light wires that is laying against wood on the buildings, will set fire to, providing there is a current on.

Q. Can you give the court and jury any idea of the number of accidents of that sort occurring?

A. I can only say that last year there was about twenty-five or thirty; four or five killed; as well as horses killed.

Q. You spoke of high-potential wires. I am not sure that I got what you said about that. What do you mean by high-potential wires?

A. That is electric light wires carrying anywheres, as has been expressed here, from 500 to 7000 volts' pressure.

132 Q. In the case of wires of that sort, do the accidents always occur from immediate contact with those heavy-pressure wires, or do they occur otherwire?

A. Otherwise, in direct course.

Q. What do you mean exactly by that?

A. I mean an electric light wire or another wire will come in contact with one another. The wire coming in contact with the electric light wire or the telegraph wire would be the conductor carrying the current from the electric light wire to the ground or to a terminal; commonly called in our business a ground.

Q. During the years 1885 to 1891, were there or were there not a considerable number of wires in the city put up by irresponsible parties, affording the possibility of irregular connection?

A. There were.

Q. What is the effect of the weather on electric wires?

A. Injurious as a conductor.

Q. A severe cold snap?

A. That does not hurt it so much; that makes it better.

133 Q. Sleet on the wires?

A. Breaks them down, and is liable to cause accident by the breaking of these wires coming in contact with others.

Q. Suppose there were a severe storm of sleet in the city, what would be the likelihood as to the number of places where wires would snap? Can you give us any account from your experience?

A. Yes, sir, there are cases where fifty or a hundred wires are broken down, and another time ten or twenty or whatever it may be. The electrical bureau employs linemen and construction men

who are always called in immediately and sent out in cases of that kind to disconnect or cut or repair the lines so as to remove the source of danger.

Q. Are you speaking of city wires only?

A. All wires and any wires, particularly city wires, we give them the first attention so as to enable our fire wires communicating alarms of fire and police, to have them in order in case of fire.

Q. Do the linemen of the electrical bureau do any work on wires that do not belong to the city, on occasions of fires?

A. Only where it would be beneficial to the city as well as to the other to assist a little, but not as a general thing.

134 Q. Who handles the wires at a fire?

A. Our chief line-inspector on the ground.

Q. When your line-inspector does not get there, who handles them?

A. The foreman of the gang, whoever he may be, of our linemen.

Q. When none of your men get there, who handles the wires at a fire?

A. The police pull them out of the road the best they know how, but they are afraid of them, as well as the firemen.

Q. Please mention just what the employees of the electrical bureau do with regard to wires belonging to other parties than the city of Philadelphia. I am now speaking of overhead wires.

A. We have a chief line-inspector who is constantly upon the street all over the city looking after lines, to see that they are in order, and that everybody uses proper care so far as safety is concerned, poles and wires, and where he comes across any poles that have decayed or any that is liable to be pulled down, or in a dangerous condition in any way, he reports to me, to the head of the office, and from me it is communicated to the parties interested, telephone, telegraph and electric light companies, to give the matter attention. Where it is urgent, we give it immediate attention

135 or as soon as possible, so as to avoid accidents. Our other men do the same way, and they report—our linemen, what we call pole-climbers. We have a great many complaints from citizens, of these housetop wires that have been placed upon their buildings without authority, some places, to go and cut them off. Others where they are cut and dangling over the fronts of buildings. We send out our linemen to remove those ends or whatever may be hanging over the buildings or dangerous in the street. In other words, to keep the street clear of all dangerous wires.

Adjourned until Thursday, April 18, at 10 a. m.

136 Copy.

EXHIBIT No. 1.

Statement covering the actual cost of maintenance and keeping in repair all owned and leased wires in the sixth district, eastern division, Western Union Telegraph Company, from 1885 to 1891, inclusive.

Year.	Date.	Between—	Actual cost. Number of miles wire.	Total am't cost.	Rate per ann.	Av. rate p'r an.
1885	June 30	All points in the district	31980.36	21307.15	1.33	
"	Dec. 31	" " "	33702.71	21640.76	1.28	
						1.30½
1886	June 30	" " "	33702.71	20494.44	1.22	
	Dec. 31	" " "	33711.31	23004.04	1.29	
						1.25½
1887	June 30	" " " ...	34006.31	24384.50	1.43	
	Dec. 31	" " "	34357.21	22375.50	1.30	
						1.36½
1888	June 30	" " " ...	40866.56	43772.04	2.14	
	Dec. 31	" " "	40866.56	30915.81	1.51	
						1.82½
1889	June 30	" " "	40872.67	48417.86	2.37	
	Dec. 31	" " "	40872.67	37687.63	1.84	
						2.10½
1890	June 30	" " "	39614.07	30159.02	1.53	
	Dec. 31	" " "	40034.98	27545.58	1.88	
						1.70½
1891	June 30	" " "	40024.48	37829.03	1.89	
	Dec. 31	" " " ...	40174.63	29241.62	1.45	
						1.67
		Average rate for 7 years	.....	.....	.....	1.60⅘

137 Copy.

EXHIBIT No. 2.

Amount of license charges for maintenance of poles and wires overhead for telegraph, telephone, and electric light purposes in the city of Philadelphia.

1885	$16,942.50
1886	16,587.00
1887	17,338.00
1888	16,464.50
1889	16,281.27
1890	16,902.50
1891	18,349.00
	$118,864.77.

138 Copy.

EXHIBIT No. 3.

Statement of the number of telegraph poles and miles of telegraph wire belonging to the city of Philadelphia erected and maintained in and over the streets thereof during the years following, to wit:

Years.	Number of poles.	Miles of wire.
1885	3686	538½
1886	3817	595
1887	4111	664½
1888	4649	795½
1889	5117	903¾
1890	5309	758
1891	5530	837¾

139 Copy.

EXHIBIT No. 4.

Statement of the salaries of the chief of electrical bureau of the city of Philadelphia and his assistants, clerks, linemen, etc., for the years hereinafter stated, as follows:

1885.

Salary of chief	$3,000.	
Salary of chief clerk	1,200.	
1 inspector	1,000.	
1 foreman	900.	
2 linemen	1,600.	
Keep, etc., of horse and wagon	400.	
		$8,100.

1886.

Salary of chief and chief clerk	$5,700.	
1 inspector		
1 foreman		
1 lineman		
Keep of horse	400.	
		6,100.

140 1887.

Salary of chief and chief clerk	$6,300.	
3 inspectors	3,000.	
1 foreman	900.	
5 linemen	4,000.	
Keep, etc., of horse and wagon	400.	
		14,600.

1888.

Salary of chief	$3,500.	
Salary of chief clerk	3,100.	

4 inspectors	4,000.	
1 foreman	900.	
6 linemen	4,800.	
Keep, etc., of horse and wagon (3 wagons)	500.	
		16,800.

1889.

Chief	$4,000.	
Manager and clerk	3,400.	
5 inspectors	5,400.	
1 foreman	900.	
6 linemen	4,800.	
Keep of horse and 3 wagons	500.	
		19,000.

141 1890.

Salary of chief	$4,000.	
Assistant and clerk	5,200.	
6 inspectors	6,480.	
1 foreman	900.	
7 lineman	5,600.	
Maintenance of horse and 3 wagons	500.	
		22,680.

1891.

Salary of chief	$4,000.	
Manager	2,500.	
Ass't manager	1,500.	
Clerk	1,500.	
Ass't clerk	800.	
Draughtsman	1,000.	
Six inspectors 1080 each	6,480.	
Foremen	900.	
7 linemen, $850 each	5,950.	
		24,630.

142 Second day.

PHILADELPHIA, PA., THURSDAY, *April* 18, 1901.

David R. Walker resumes stand.

Direct examination continued.

By Mr. MILLER:

Q. You were asked just before the close of yesterday's session to state "what the employees of the electrical bureau do with regard to wires belonging to other parties than the city of Philadelphia."

143 The question was asked as to overhead wires, and you answered this far when court adjourned: "We have a chief line inspector who is constantly upon the street all over the city, looking after lines, to see that they are in order, and that everybody uses proper care so far as safety is concerned, — poles and wires, and

where he comes across any poles that have decayed or any that is liable to be pulled down, or in a dangerous condition in any way, he reports to me, to the head of the office, and from me it is communicated to the parties interested, telephone, telegraph and electric light companies, to give the matter attention. Where it is urgent, we give it immediate attention, or as soon as possible, to avoid accidents. Our other men do the same way, and they report—our linemen, what we call pole-climbers. We have a great many complaints from citizens, of these housetop wires that have been placed upon their buildings without authority, some places, to go and cut them off. Others where they are cut and dangling over the fronts of buildings. We send out our linemen to remove those ends or whatever may be hanging over the buildings or dangerous in the street. In other words, to keep the street clear of all dangerous wires." Did you finish the answer to that question, or do any other duties of your men in your bureau, with regard to wires owned by other parties than the city, come to your recollection

144 now?

A. The bureau supervises the erection, construction and maintenance of all poles and wires, of any kind of electrical work upon the highways, supervises the construction and maintenance and see that they are kept in proper position and see that they are placed in the proper position, that is to say, with telegraph wires the rule of the department is that telegraph wires shall be above the electric light wires where it is possible to have it so. The electric light wires are not permitted over the top of other wires if it can be avoided.

Q. The object of that is what?

A. Safety, to prevent accidents.

Q. Which might happen otherwise in what way?

A. If those large wires, those electric light wires, are large, they are liable to sag down or fall upon a number of wires. They may catch half a dozen, and by which the current from this electric light wire would pass over on those lower wires, five or six or, a dozen, whatever it may be, or come in contact with. While in the other a single wire above would only take the current on one wire. That is the object of that, to have as little risk as we possibly can to life and danger of burning houses and property.

145 Q. Wherever it is possible to have the electrical wires suspended below the telegraph wires——

A. Telegraph and telephone—all wires. Also that we do not permit wires to run in between. See that the electric light wires do not run in between telegraph wires, or telegraph wires in between electric light wires, so as to remove all sources of danger so far as we possibly can. That is constantly going on all over the city.

Q. You are exerting yourself all over the city to prevent that?

A. Precisely, yes, sir.

Q. Are there any other duties that happen to come to your mind about that, that you are able to recall?

A. This general supervision of our linemen. Our chief line inspector with the linemen have all those instructions in so far as all

lines are concerned whether overhead or underground. It is a supervision, rules or regulations for which we formulate and print in book form, on construction and maintenance.

Q. Have you one of the books with you?

A. I have not just here. I did not bring one. I think I gave you one.

Q. You have that in book form?

146 A. Yes, sir; it is a small book that we have, a regular set of rules and regulations by which we govern this construction and maintenance of lines.

Q. Rules governing what?

A. The construction and maintenance of telegraph, telephone and electric light lines and trolley lines—on everything.

Q. Is that the book (handing witness book)?

A. Yes, sir.

Q. Was that printed as far back as 1891?

A. No, sir, that was only printed in recent years. It is virtually a copy of our rules and regulations ever since the electric light and trolley lines came into existence.

Q. You said in the early part of your testimony that there had been twenty-five to thirty accidents in the city from electrical wires. I think you said that was in this last year.

A. During the last year, 1900, we had about thirty accidents of different kinds.

Q. How did that number compare as nearly as you may be able to say, the average of accidents, since heavy-current wires were introduced by the city?

147 A. That was an excess of any other year.

Q. It was greater than any other year?

A. Yes, sir.

Q. Give the court and jury an idea of the frequency of accidents running back say to 1885.

A. We did not have scarcely a death, not more than one or two in a year, prior to 1900.

Q. Counting all kinds of accidents and injuries less than death and burning about how many would there be in the course of the year?

A. There would not be more than one or two prior to that—two or three.

Q. What are you speaking of?

A. Prior to about 1890, eight or ten years ago.

Q. You mean not more than one, two or three deaths?

A. Deaths.

Q. I mean including the other kind, burning.

A. There were a few, but I could not give you the number. I keep a record of those things too. Probably might have been half a dozen or one dozen burned, but no fatal accidents of any kind, more than one or two. We have passed over a year without any.

Q. How about injury to property?

A. We have had some of that kind. We had more of them a few

years ago than we have now. Where fire was set to by it, by incandescent light.

148 Q. Have you any connection with the board of highway supervisors?

A. I am a member of it.

Q. Have been how long?

A. One of the original members; about ten or twelve years ago.

Q. The duties of that board are what?

A. All applicants for the opening of the streets, the laying of any substructure of any kind, comes before that board for approval and authority to issue a permit.

By the COURT:

Q. When you say opening streets, you mean digging holes in them?

A. Yes, sir, digging the holes and the location of a structure in the street.

By Mr. MILLER:

Q. Does that apply to sidewalks?

A. Yes, sir, everything.

Q. The planting of a telegraph pole?

A. It has nothing to do with that part of the service. The board of highway supervisors has nothing to do with the overhead service.

Q. Are ordinances passed occasionally upon the subject of regulations of electrical poles and wires?

149 A. Ordinances are passed giving authority to parties, which will be subject to the ordinances in force or thereafter passed.

Q. That is, ordinances of special permission?

A. Yes, sir.

Q. To companies to construct their lines in the city?

A. Yes, sir, there was a general ordinance passed in 1882, requiring all overhead wires to be placed underground by the first of January—I believe I am right—1885, but three years was the time. Just about the time that this privilege expired, by resolution of councils, the chief of the electrical bureau was directed to suspend operations.

Q. To suspend what operations?

A. Not to put it in force.

Q. Not to remove the wires?

A. No, sir, not to remove them.

Q. How many wires were there overhead at that time?

A. I could not tell you without referring to my reports.

Q. There were a great many of them?

A. There was a great many. Some places there was 100 in position; some places not over two or three or five or ten.

Q. At that time in 1882 this ordinance that has been offered

150 in evidence of 1881, putting a charge of one dollar a pole on poles had been passed, of course?

A. Yes, sir.

Q. In 1883 the ordinance imposing charges on wires overhead had been passed?

A. I think that is about it.

Q. Whatever the date was?

A. Within one or two years of that.

Q. Councils having passed a resolution in 1885, put off the final step requiring all overhead wires to go underground, what did they do in 1886, bearing upon the question of overhead or underground wires?

A. The ordinance of August 5, 1886, required that parties putting underground wires should furnish the city with one tube or duct for the use of the city.

Q. What was done in 1886 about charges on the underground wires?

A. The charges, where they were put underground, were removed, as an inducement to have the wires placed underground, and the only requirement was, that whoever did it should supply the city or furnish the city with one duct or chamber for the use of the city. There was no other charges connected with it. It was to remove all license charges, to have them place their wires underground.

Q. There is a conduit charge. There was then a conduit charge?

151 A. There was, but it was removed. There was a charge originally on underground wires as well as overhead. That was all removed by ordinance of council.

Q. You are speaking now of the mileage charge?

A. Yes, sir, on conduits and wires also.

Q. What I would like to know is, whether there was not at that time, after that ordinance, a charge per foot or conduit?

A. Yes, sir, there was one.

Q. Was that removed in 1886?

A. That was removed, I do not know in what year, but it was removed about that time.

Q. There is no such charge now?

A. None whatever.

Q. Wires underground are free?

A. Yes, sir.

Q. So far as any charge against the wires or the conduits is concerned?

A. Yes, sir.

Q. What was the object of these changes, imposing a charge on overhead wires, and the removal of charges from underground wires?

A. As an inducement for them to place their wires underground. To remove them from this danger of overhead construction and the accumulation of dangerous wires.

152 Cross-examination.

By Mr. PETTIT:

Q. You have always been a great advocate of the underground system, have you not?

A. I have.

Q. And you have carried on in this city a system of underground electrical communication more extensive than anywhere else, have you not?

A. So far as I know, yes, sir.

Q. Under your administration you have built for the city a great many miles of electrical underground conduits, have you not?

A. Yes, sir.

Q. About how many miles have you now?

A. There is about over two million feet, I think it is, of the city's.

Q. Belonging to the city?

A. And there is about twenty-one million feet of underground conduits in the city of Philadelphia.

Q. How many feet belong to the city?

A. About two million.

Q. When did you commence the building of those lines?

A. In 1886.

Q. I notice that in the general expenses of your office including the salary of the chief and his chief clerk, inspector, foreman,
153 linemen, a horse and wagon which were used to drive about with, that 1887 increased forty per cent. Was that about the time that you commenced this building for the city?

A. What year?

Q. Between 1886 and 1887.

A. That is about the time we commenced to put wires underground.

Q. The city rents those conduits, does it not?

A. Yes, sir, wherever they have it to spare, as an inducement to them to put their wires under.

Q. When you are speaking of charges, you did not include this rental by the city of its own conduits?

A. Not at all. The city does not rent conduits that are furnished by other parties. Only their own by which the city is paid for the construction of placing them there.

Q. Out of the twenty-one million feet, nineteen million feet, about, are owned by other parties and the city has a private duct in them?

A. No, sir, they are owned absolutely by the city, every foot of them. I mean the two million feet.

Q. You did not catch my question. If I understand it the city owns two million feet of conduit, about?

A. Yes, sir, a little more or less.

Q. And that they rent out to people that choose to use them?

154 A. Such as they have to spare, yes, sir.

Q. What they have to spare?

A. Yes, sir.

Q. And you derive quite a revenue from it?

A. We charge ten dollars per annum—we rent wires also—ten dollars per annum per mile of one wire. For a duct three hundred dollars for the first mile, two hundred and fifty dollars for the second mile, and two hundred dollars for the third, for any going down—an average of two hundred and fifty dollars per mile where three miles is occupied.

Q. Can you give me any idea as to the total revenue last year by the city from the rent of its own ducts?

—. ——.

Q. It is in your report, is it not?

A. Yes, sir.

Q. Have you your report here?

A. I have, yes, sir.

Q. Let me see your last printed report. 1899 is the last printed report?

A. I have 1900 there (producing book). That has not been printed in book form. It is in the hands of the printer.

Q. Has this in it the statistics about your rental?

A. Yes, you can find them there from each different company.

155 Q. This busines of building ducts, as you say, commenced in about 1886 and has been constantly prosecuted ever since, year by year?

A. Yes, sir.

Q. And with the revenues of the department the expenses of the department have increased, have they not, necessarily?

A. As our extensions our whole service increases, both in labor and general expense and outlay.

Q. How many poles has the city in the streets at this time?

A. I think in the neighborhood of five thousand. I can tell exactly by that report.

Q. What are they used for?

A. For all kinds of electrical service other than trolley.

Q. How many electric lights have you in the city?

A. We have 8,607. We will have over nine thousand in a few days.

Q. As a rule does the city have anything to do with the poles on which those lights are?

A. Yes, sir.

Q. What is that?

A. The supervision of their construction and maintenance.

Q. Does the city own the poles or does the lighting company own them?

A. The lighting companies own their own poles. They
156 have poles of their own, as well as use the city's and telegraph company's poles wherever they can get on without the erection of poles.

Q. The electric light companies use their own poles?

A. Yes, sir.

Q. And city poles?

A. Yes, sir.

Q. And also sometimes telegraph poles, do they?

A. Yes, sir, where they can get permission to use them.

Q. And the whole business makes about as many lights as you said?

A. Covers that lighting territory, underground and overhead.

Q. Those lights, however, that are on the telegraph poles, are public lights, are they not?

A. They are.

Q. You do not allow private lights on those poles?

A. I do not know of any.

Q. According to your reports I see that the number of poles belonging to the city in 1885 was 3686 and by 1891 it had increased to 5,530?

A. That is about it.

Q. Can you tell generally what that increase of two thousand poles was for. Was it police purposes or electric lighting or what?

A. Of the city?

157 Q. Yes, sir.

A. For the extension of the city service, telegraph, telephone and fire.

Q. Of the city's own service, telegraph and telephone?

A. Yes, sir.

Q. That telegraph service includes lines of telegraph from where to where?

A. From city hall through the entire city to points in every direction.

Q. That means all the police stations?

A. Yes, sir, fire stations.

Q. And fire stations?

A. Yes, sir, police, patrol service and highways.

Q. Police-patrol boxes?

A. Yes, sir.

Q. And the fire-boxes?

A. Yes, sir, and telephone service of the city to the different institutions, hospitals &c.

Q. And all that work and all those lines are supervised, and were supervised, by the office force of your department, were they not?

A. By the employees of the department, people who were permanent as well as those who were temporarily engaged.

Q. In respect to the granting of permits to these telegraph companies, is there any man or boy about your place that you

158 can dispense with if you did not have those permits to grant?

A. No, sir, we are very much crippled for help as it is. Our force is too small.

Q. Prior to the introduction of the electric light in Philadelphia was there any danger from telegraph wires?

A. Yes, sir.

Q. In what?

A. That they would sag down or break down across the highways or on roofs where they went; of people coming in contact with them and being injured, and trip and fall off of the roof of the house, or animals in the streets being cut on their legs, and everybody else.

Q. The danger was the same as that would be from any other kind of wire?

A. Yes, sir.

Q. It had no electrical danger?

A. No, sir.

Q. About when was it that the electric lights were introduced in the city to any extent beyond the mere experiment?

A. In 1882, I believe, we located this line on Chestnut street, which was the first.

Q. That was the first line, along Chestnut street, built by the Brush Company?

A. Yes, sir, the Brush Company built a line of forty-nine lights on Chestnut street from the River Delaware to the River
159 Schuylkill, and furnished the lights free of cost for one year, forty-nine lights, so as to show the city it was feasible, and with the view of getting the experience.

Q. That was the time that the camel put his head in the tent?

A. Yes, sir.

Q. Those wires, you say, you always direct to be placed under the telegraph wires?

A. So far as possible, yes, sir.

Q. The trolley lines were introduced when?

A. I cannot tell you just exactly unless I look at the book.

Q. You do not remember?

A. No, sir.

Q. About?

A. I judge the trolley has been in service ten years or eight years.

Q. It was while Mayor Stuart was mayor, was it not?

A. Yes, sir, Mayor Fitler and Mayor Stuart together, about eight or ten years ago.

Q. About six years ago?

A. I guess I am pretty near right.

Q. What is the effect of wires coming in contact with trolley wires? Are they or not dangerous?

A. Very dangerous. The burning capacity is much greater.

Q. All the danger arising electrically from telegraph wires
160 has come since the introduction of these new things, this light and trolleys?

A. So far as shock is concerned, yes, sir.

Q. The telephone wires do not shock anybody, do they?

A. They will if they get a current, I think. They are as dangerous as any other where they come in contact with an electric wire.

Q. Without that?

A. No, sir.

Q. That proves the telephone is perfectly harmless?

A. Perfectly, yes, sir. The ordinance of councils authorized the construction of trolleys in this city under the supervision and direc-

tion of the electrical bureau. It did not say their wires should go underground or overhead particularly, and the department took the position, construed the ordinance to mean that they could make them put them underground or overhead—their feed-wires—and I took that position, that they should bury their feed-wires, as they were unsafe overhead, and the companies complied with that demand or request, and they have been all put underground with the exception of one, two or three locations, such as Lancaster avenue west of Thirty-third street, and out on towards Willow Grove, and on the York pike, about Nicetown lane, and one or two other places outside of the city; but no overhead feed-wires are suspended within the immediate center of the city.

Q. The wire from which the trolley is attached necessarily has to be exposed?

161 A. Yes, sir.

Q. And is uninsulated?

A. Yes, sir, it is not insulated.

Q. In the operation of your lines that belong to the city, about how many miles of wire do you operate?

A. We have about sixteen hundred miles, I think, fifteen hundred or sixteen hundred miles overhead in the suburbs. We have about twenty-five hundred or three thousand miles of wire underground. In all, in the city of Philadelphia there is about 75,000 miles of wire, trolley telegraph, telephone, electric light, overhead and underground.

By a JUROR:

Q. Do you mean 7,500 or 75,000?

A. 75,000.

By Mr. PETTIT:

Q. If the wire gets out of order, gets weakened or rusted—I am speaking about an overhead wire—is or is not that detected by the galvanometer?

A. Yes, sir.

Q. And underground wires, of course you can have no other means of detecting the weakness except by the galvanometer?

A. That is right.

Q. In these cases of accidents resulting in death or fire, where has the current come from that produced either the fire or the death?

162 A. Either from electric light or trolley currents.

Q. Can you remember any of those incidents in which it was communicated by a telegraph wire? I am not speaking now about the crossings of a roof, falling on a roof or anything of that kind, but where it came by communication from the telegraph wire.

A. We have had them, yes, sir.

Q. Which one?

A. We had them on Ridge road and most everything there up that way. We have had a number. I have them all on record.

Q. You have had a particular incident?

A. Yes, sir, where the wires fell upon buildings, on top of the buildings, or on the side of buildings, and at the same time a distance off had fallen upon a trolley or electric light wire, and it was communicated to that building where this telegraph wire would be laid or badly protected, or insulated, commonly called, on that building, leading down the spout, it would go into the spout or a fire-escape. Anything which was a metallic substance would be the conductor of electricity.

Q. In that case it was a telegraph wire which carried the current into the building and produced the fire?

A. Yes, sir, it will do it in the office. Will set the instrument on fire.

163 Q. Is there any other instance out of the thirty which you can think of in which a telegraph wire was the means of communication?

A. It was only partially so—the extension of the current from the trolley or electric light. The telegraph wire would be the terminal. But not of themselves. I have them on record, but I cannot at this time just recall the particular case. We have had them.

Q. Do you think of any other instance in the city of the twenty or thirty, in which there was a telegraph wire played a part? I am not speaking about the roofs, or light wire falling on the gutter, or anything of that sort.

A. I cannot, at this short notice, recall those things without reference to my data. That is in the hands of our men who have charge of the details of the office.

Q. You spoke about the ordinances. Have there been any general ordinances that you think of or remember I mean ordinances providing for the general regulation of either overhead or underground wires, either for telegraph or electric light purposes, other than the three that have been given in evidence, imposing those charges, and the one you spoke of, the action on which was suspended?

A. All ordinances put the general supervision, care and control under the electrical bureau.

164 Q. The ordinances that are passed by councils from time to time, relate exclusively to the one company or to the one person that are mentioned therein?

A. Yes, sir, and subject to ordinances then in force.

Q. Subject to the general ordinance?

A. Yes, sir.

Q. I am speaking now about general ordinances. Has the city seen occasion to change its general regulation for many years?

A. No, sir.

Redirect examination.

By Mr. MILLER:

Q. What proportion of the city's wires are under ground? You may possibly have answered that question, but I did not hear it.

A. I think it is about, as near as I can tell, about two-thirds.

Q. What has been the progress since 1885? Has it been in the direction of increasing or reducing the number of wires under ground?

A. We put everything under ground we can. We have diminished the overhead as far as we can, and increased the underground.

Q. As a matter of fact, has any considerable quantity of wire been put under ground since 1885 by the city? I mean its own wires.

A. We put everything under ground we can. We have, as I say, about 2500 miles of wire underground, to 1600 overhead, in
165 localities we cannot reach. I think the cost of maintenance of a wire under ground is probably not a dollar a year per mile. Over head will run anywheres from ten to twenty.

Q. How much wire had you under ground in 1885?

A. We had none worth speaking of. It was my first attempt to place wires under ground, which was on Broad street, from Columbia avenue to Lehigh, in 1886.

Q. How much wire had you under ground in 1891?

A. I cannot tell you that without referring to my records.

Q. Can you approximate it?

A. I cannot; I would not like to. We were putting it down all over since.

Q. Can you, by looking at the report for 1892, tell us how much you had under ground about that time (handing witness book)?

A. Under ground the city had 369 miles of telegraph and telephone wires.

Q. In what year?

A. In 1892.

Q. Now you have 2500, I think you said.

A. I can tell you exactly by looking at my data there.

Q. I mean only the wires owned by the city.

A. Telegraph and telephone wires, this is all the wires under ground I will give you first.
166 The telegraph and telephone wires under ground is 61.832 miles. The overhead wires is 11.155 miles, trolley, electric light, telegraph and telephone company. A grand total of 74,376 miles of wire in the city, of which the city has overhead 2010 miles of electric light wire. Overhead trolley wires, 674 miles; underground, 981 miles. The city has 50 miles of electric light wire underground. It has 1613 miles of overhead wire, and, it has 3533 miles of wire under ground, in place of 2500.

Q. How many messages can be sent over a single wire at the same time?

A. I cannot answer that question. Mr. Gill can answer that better than I can. A number can be sent over.

Recross-examination.

By Mr. PETTIT:

Q. You have here put together in your statement of overhead and underground wires, the telephone and telegraph wires?
A. Yes, sir.
Q. Have you any knowledge as to how much of it is telegraph and how much of it is telephone?
A. I can tell exactly if I should refer to my records.
Q. Could you tell by your report?
A. I could by my report.
Q. Your annual report?
A. Yes, sir, it is in there.
167 Q. I will show you your report for 1899. I mean the difference between telegraph and telephone. The telephone is very much the larger part?
A. Yes, sir, the telephone. I would have to subtract.
Q. I would like to know whether you have that there?
A. The Bell Telephone Company had, in 1899, wires on buildings and fixtures, 1564 miles. They had a mileage of wire on poles, returned of 4721 miles. Miles of their wire on city poles, 68 miles. They had underground—do you wish that?
Q. No, sir, I do not care about that.
A. They had 44,000 miles.
Q. That would be 1564, 4721 and 68, making 6353?
A. I made a mistake there, 34 in place of 68, making 6321 miles.
Q. That would be 6319 miles out of the 8740 miles total overhead, that you have put on your written statement?
A. You make a mistake. It is 6321 miles.
Q. 6321 miles of that 8470 miles was telephone wire?
A. Yes, sir.

DANIEL J. MCNAMARA, having been duly sworn, was examined as follows:

By Mr. MILLER:

Q. Have you any connection with the electrical bureau?
A. Yes, sir, chief line inspector.
168 Q. How many line inspectors are there?
A. There are eight linemen. I think there are eight inspectors.
Q. Sixteen in all?
A. Yes, sir.
Q. Do you have anything to do with looking out for danger from wires in the city?
A. Yes, sir.
Q. I wish you would mention some of the accidents that you have known particularly between 1885 and 1891, if you are able to mention one occurring about that time, so as to give the court and jury an idea of the extent of danger from electric wires overhead in the city.

A. From 1885 to 1891?
A. Were you connected with the bureau at that time?
A. Yes, sir; I do not know that I can recall any fatal accidents between those years.

By the COURT:

Q. Accidents of any kind.
A. There were quite a number of accidents, but I could not call them to mind now. They are happening every day, more or less.

By Mr. MILLER:

Q. Were they happening more or less frequently between 1885 and 1891?
A. Yes, sir.
Q. More or less frequently?
169 A. Less frequently then than now.
Q. How does the number of wires compare now with the number of wires then? Are there more or less wires now than then?
A. I do not know that there is much difference. There is a large number goes under ground. There is quite a large number overhead. There is more uses of wires now than that time, telephone wires especially.

(No cross-examination.)

EDWARD A. WATERS, having been duly sworn, was examined as follows.

By Mr. MILLER:

Q. What is your position?
A. Assistant to the chief engineer of bureau of fire.
Q. Where is the chief engineer. Is he here?
A. He is sick. He has been laid up for near four weeks.
Q. Do you go to fires?
A. Yes, sir.
Q. For what length of time have you been accustomed to go to fires?
A. I have been going to fires since 1874.
Q. Are you or are you not acting chief now?
A. Acting chief, yes, sir.
Q. Have been how long?
A. For this last four weeks.
170 Q. Did you observe the effect of electrical wires overhead on the work of firemen?
A. Yes, sir.
Q. Is there any interference from that cause in the work of putting out fires?
A. Yes, sir, very frequently.
Q. Can you speak of instances?

A. Yes, sir, only last Monday night we had a fire at Passyunk avenue, above Catharine, and had quite a time with our ladders, getting them up. In fact, the men refused to go up the ladder on account of the wires, until we had the current cut off from the arc electric light wires.

Q. What is generally done at such a time?

A. I generally hunt up a lineman and get him to telephone to the company and cut that current off.

Q. What linemen do you send for?

A. Any one I can see on the ground. It does not make any difference whether it was the electric or any other company; any one I see there.

Q. Is there any difference in the unwillingness of the firemen to go up the ladder whether the wires are telegraph wires or electric light wires?

A. Yes, sir. They won't go up if they know there is any danger.

171 Q. Do they know the difference, so they will handle telegraph wires readily and will not handle electrical wires?

A. Yes, sir, they know the difference.

Q. Suppose there were only telegraph wires, is there any interference?

A. Interference in getting up the ladders, yes, sir; that is, to the higher stories. Of course we can work the lower stories without any trouble. We can go under the wires handier with our ladders, but when it comes to reaching the upper stories, we cannot get these ladders under them.

Cross-examination.

By Mr. PETTIT:

Q. In the center of the city, where the big buildings are, the wires have been pretty generally removed, have they not?

A. A great many of them, yes, sir.

Q. I mean telegraph wires.

A. Yes, sir.

Q. Only the electric light left?

A. Yes, sir.

Redirect examination.

By Mr. MILLER:

Q. How about the roofs of houses, is there any trouble from wires there?

172 A. Yes, sir, often at night. Not so much through the day, when we can see them, but at night when we do not see them.

Q. Firemen have to climb over the roofs of houses, of course?

A. Yes, sir.

Q. What is the condition of a fireman's clothing, generally, as to the liability of electricity passing on to their bodies?

A. Generally wet.

Q. And that makes the electricity more likely to run over their bodies?

A. Yes, sir.

Mr. MILLER: By agreement of counsel I read the testimony of William B. Marks. I understand this testimony, and also the testimony of Abraham M. Beitler read yesterday, are read under the agreement that if these witnesses were called at this trial, they would testify in the terms of their former testimony.

(Testimony read, as follows:)

173 WILLIAM D. MARKS, having been duly sworn, was examined as follows:

By Mr. MILLER:

Q. What is your occupation or profession?

A. That of electrician and engineer.

Q. How long have you been in that occupation?

A. As electrician since 1878, when I made the acquaintance of Edison. Since that time I have held the professorship of dynamics at the University of Pennsylvania; I also was superintendent of the Franklin Institute electrical exhibition, president of the Edison Electric Light Company of Philadelphia, and engineer of it at the same time, and president of the American Electric Heater Company and of the General Electric Automobile Company.

Q. What is the Edison Electric Light Company?

A. It is a station with about one hundred and fifty thousand incandescent light capacity, situated near the corner of Ninth and Sansom streets, having several hundred miles of copper wire attached to it under ground.

Q. In the course of your work as an electrician have you had an opportunity of judging the advantages and disadvantages in point of safety and in point of expense of overhead and underground wires?

174 A. It has been uniformly the case that where wires have been put under ground, their safety, except when being repaired by skilled employees, might be called absolute. Although the first expense of putting the wires under ground is great, in the long run it becomes cheaper, because of the absence of the continual breakages due to the action of the elements, the rotting of the poles, wind, sleet storms and all the various things that combine to bring down wires strung in the air.

Q. You speak of the safety of wires under ground as being absolute so far as the public are concerned. Is it possible to maintain wires overhead absolutely safe?

A. I do not think so.

Q. Is it practicable to protect the public in the fullest degree against the dangers of overhead wires by a system of repairs under which a man does not go out on the line until the stoppage of the current shows a defect?

A. It is quite impossible to do so.

Q. What is the best practicable system to avoid accidents from an overhead wire?

A. Constant personal vigilance of inspectors anticipating any possibility of breakage by careful inspection.

Q. That is, going ahead of notice of any defect and look-
175 ing out for signs of danger that there will be a stoppage?

A. Yes, sir.

Q. Are you able to tell the court and jury how far it is practicable for a police force, each member of which has a certain district or beat assigned to him for his daily patrolling, to be of service in guarding against dangers from overhead wires?

A. That would depend largely on the amount of time left to a policeman from his other duties, if they took the precedence. It is not difficult to instruct any man of average intelligence in the signs of breakdown of overhead wires; that is, the ordinary signs. The question of insulation on high-tension wires remaining there, is one that a man with a good pair of eyes would soon learn to judge of—not, perhaps, infallibly. The question of uninsulated wires, like the telegraph wires, is not so easy. It would be quite difficult for a man who could not mount the poles to satisfy himself, except in very obvious cases of very great sag or of actual breakage.

Q. I understand that in the case of insulated wires a defective condition of the wire is apparent from the street?

176 A. A defective condition of the wire is very easily apparent in case the insulation is looked after.

Q. But if a telegraph or telephone wire which has no cover is rusted, that would not be possible from the footway on the street?

A. Or if it had diminished in diameter by rusting and scaling, you could not tell without very close inspection.

Q. If it were out of place?

A. You could tell it instantly.

Q. Or if a skin wire or some other wire that had no business there had been rigged up close to it?

A. You could tell that at once. Pardon me if I explain that with two wires hung side by side, crosswise to each other, there may be said to be two chances of breakage or contact. With three wires, any one of them may break, making three chances of breakage, and any one of them may possibly fall across the other two, so that with three wires there is six times the chance of trouble that there is with two wires. As the number goes on increasing, the number of chances of breakage and accidental contact becomes almost uncountable. You cannot tell in how many different ways a large number of wires may create trouble.

Q. Is, or is not, accident from a stray current, or in some
177 such way, a common thing in municipalities in modern times?

A. I have not kept accurate memoranda of that, but I should say that it is a very common thing.

Q. Is the danger of such accident limited to the city where the contact or crossing occurs?

A. That depends entirely on where the wire that crosses leads to. It might be one hundred miles away, or more than one hundred miles away.

Q. A telegraph wire might cross an electric light wire in New York, and if the conditions between were not such as to forbid, it might kill somebody in Philadelphia?

A. Or make a fire in Philadelphia.

Q. What are the conditions that would be likely to prevent that? Are there such conditions in general use?

A. A great many precautions have been taken simply because of those accidents. The use of fuses, the uses of automatic cut-outs, which fly out and break the contact; but, even in spite of that, there are still occasional accidents—and serious ones—both as a matter of fire and as a matter of injury to individuals, if not actual death.

Q. Is it usual to have groundings at all stations?

A. Yes, sir.

Q. Does a grounding necessarily prevent the danger of such a current and overcharge passing to a great distance?

A. That is a matter where personal care and vigilance enters in. It is to be presumed that if those in charge of a station or an
178 office attend strictly to their work, and never make a mistake, that there will be no trouble, but that is not true.

Q. Are there, or are there not, well-authenticated cases of injuries occurring in one city from a current getting astray in another?

A. I could not say in that case. I only speak of one instance that I heard of, where the Philadelphia Edison Company was accused of having sent a current to Rochester. Of course, it was a low-tension current, and the question was a quarrel amongst wiremen who carried wires up inside of a railway station and in some way or another got them accidentally across the telephone wires.

(Cross-examination.)

By Mr. PETTIT:

Q. You say you never knew of but one instance where this was supposed to have happened, and that was where the current originated in Philadelphia and was discovered in Rochester?

A. It was accused.

Q. What kind of a current was it?

A. It was a two hundred and twenty volt current.

Q. For what purpose?

A. It was used for incandescent lighting.

Q. In speaking of these accidents, which you have been talking about, you have included the whole country, have you not?

179 A. Yes, sir.

Q. Your observations are made up of everything that took place in the United States so far as you know?

A. From daily reading of the newspapers.

Q. Where this Rochester incident occurred, was it your company that it was supposed to have originated with?

A. It was stated that some wireman connected with the company had carried wires in such a way as to interfere with the telegraph operations. He vigorously denied it.

Q. Your wires are all underground, are they not?

A. This was carried up inside of the house.

Q. Are underground wires practically in use anywhere except where there is a large number of wires bunched together so that the expenses of the conduit will not be too exorbitant?

A. All of the war telegraph wires used in Germany now are placed underground for the purpose of avoiding the possibility of breaking down at a critical moment.

Q. They are hidden from public view too, are they not?

A. They are also hidden as well as can be. Of course *there* cannot be hidden entirely.

Q. In this country, as a commercial operation, where we do not have wars all the time, do they put wires underground, except where *they* are a large number collected?

A. Very rarely.

180 *Defendant's Evidence in Rebuttal.*

Mr. Pettit offers in evidence the form of the report made by the police officers, mentioned in Judge Beitler's testimony.

(Marked "Exhibit 5.")

Mr. Pettit also offers in evidence the rules and regulations of the electrical bureau, identified by Chief Walker.

(Marked "Exhibit 6, April 18, 1901, M. F. M.")

Also the statement of the miles of overhead and underground wires of the city of Philadelphia in 1901, identified by Chief Walker and referred to in his testimony.

(Marked "Exhibit 7, April 18, 1901, M. F. M.")

Mr. PETTIT: I believe that I accidentally omitted to put in the acceptance by the Western Union Telegraph Company of the act of Congress of July, 1866. I thought I had put it in. I now offer that, dated June 5, 1867. I offer a certified copy thereof; the acceptance dated June 5, 1867, and the certificate of the Postmaster General as to the accuracy of the copy, being dated June 30, 1884.

Also the circular of the Postmaster General, fixing the Government rates to be paid for messages transmitted by the Western Union Company.

181 Mr. PETTIT: Since the adjournment I have obtained a printed copy of the department's report for the year 1890. I desire to read the statements therein about permits, to complete the record in that regard. I read from page 57 of that report:

"Permits.—The following will show the number of permits issued to each company and the purpose for which they were granted." Then follows a tabulated statement showing that there were thirty-five permits granted for the renewal of poles, 86 permits granted for the erection of new poles and posts, 105 permits granted for the

running of new wire, 107 permits granted for the repairs to and renewals of wire, 3 permits granted for the removal of poles; making a total of 336 permits, being an increase of 47 over last year. And at the same time the following will show the number of permits issued to each company, and the purpose for which they were intended, for underground purposes. Followed by a tabulated statement showing 99 permits granted for repairs, 248 permits granted for a new house connection, 97 permits granted for new work on the main leads, and that the Penn Electric Light Company received permits for the construction of two new manholes and for the changing of one, making a total of 447 permits issued for underground work. A decrease of 503 from the number issued in 1889.

Testimony closed.

182 Copy.

EXHIBIT No. 5.

Department of public safety.

Robert J. Linden, superintendent of police.

PHILADELPHIA, —— —, 189-.

Report of officer —— No. —, —— district, on pavements, curbs, gutters, roadways, posts, trees, and other structures on the highways out of repair or dangerous.

.....

.....

.....

.....

.....

NOTE.—Everything which requires repair should be noted, such as decaying trees, leaning telegraph poles, detached, broken or sagging wires, swinging signs with broken supports, awning posts broken, stumps of trees or trees in the middle of the pavement, or trees the roots of which make the footwalk dangerous, broken inlet tops or manhole covers, etc.

183 Copy.

EXHIBIT No. 6.

Rules and regulations of the department of public safety, electrical bureau, for the construction and maintenance of telegraph, telephone, electric light and trolley lines and underground electrical service in the city of Philadelphia.

Article 1. No pole or wire will be permitted to be erected over, along or across the highway, without a permit from the electrical bureau.

Article 2. The placing of poles on the highway without having first been inspected by the electrical bureau will not be permitted

Article 3. Telegraph, telephone, electric light and terminal poles to be of straight, sound chestnut, locust or pine timber, neatly dressed before being erected, and not less than forty (40) feet in length, eight (8) inches in diameter at the top, well proportioned; or of iron, not less than five (5) inches in diameter at the top and eight (8) inches at the surface of the pavement, set twelve (12) inches back from the face of the curb, and not less than five (5) feet in the ground, and subject to inspection and approval by the electrical bureau before being erected. Upper gain or space on telegraph, telephone and electric light poles to be reserved for city use.

184 Article 4. Trolley poles to be not less than twenty-seven (27) feet long, six (6) inches in diameter at the top, eight (8) inches in diameter at the surface of the pavement, and not less than five (5) feet in the ground.

Article 5. Location of all poles in the highways, and size and length of poles must be approved by the electrical bureau before the street or pavement is broken or pole erected.

Article 6. All pavements broken for the erection of poles or for the purpose of connecting therewith, must be repaired immediately upon the completion of the work.

Article 7. Erection of wooden poles in the streets where the footwalk is less than six (6) feet in width, will not be approved.

Article 8. The erection of poles of a greater diameter than twelve (12) inches at the surface of a footwalk six (6) feet in width, will not be approved.

Article 9. Footwalk of eight (8) feet in width, pole not to exceed fourteen (14) inches in diameter at the surface of the pavement.

Article 10. Footwalk of ten (10) feet in width, pole not to exceed fifteen (15) inches in diameter at the surface of the pavement.

185 Article 11. Footwalk of twelve (12) feet in width, pole not to exceed sixteen (16) inches in diameter at the surface of the pavement.

Article 12. Footwalk of fifteen (15) feet or more in width, pole not to exceed eighteen (18) inches in diameter at the surface of the pavement.

Article 13. Telegraph, telephone and electric light wires to be suspended and maintained not less than twenty (20) feet above the pavement, and not less than twenty-five (25) feet at all street crossings and intersections.

Article 14. No telegraph or telephone wire will be permitted to be suspended or maintained through or between electric light wires nor electric light wires be permitted to be suspended or maintained through or between telephone or telegraph wires, unless thoroughly insulated and secured to a proper support on a pole. In all cases telegraph and telephone wires, where they cross electric light wires, must, to prevent accident, be suspended and maintained not less than four (4) feet apart.

Article 15. Electric light wires to be erected and main-
186 tained across the street at not less than four (4) feet under all telegraph and telephone wires, to prevent accident.

Feed-wires, where authorized, shall be suspended and maintained

not less than twenty (20) feet above the pavement, and at street crossings or intersections, not less than twenty-five (25) feet above the street.

Article 16. Trolley wires shall be suspended not less than twenty (20) feet above the street pavement, and maintained not less than eighteen (18) feet above the roadway, and kept thoroughly insulated to prevent current escaping to the poles. At steam railroad crossings said wires are to be suspended and maintained not less than twenty-two (22) feet above the roadway.

Article 17. To prevent accident, dead or unsafe wires shall be removed from along or across the highways by the party or parties causing the same to be erected.

Article 18. In all cases poles to be erected and maintained not less than four (4) feet from fire-plugs and gas lamps.

Article 19. Head guys or stay-wires must be attached to the poles when the electrical bureau deems it necessary for the proper maintenance and safety. Guard-wires shall be erected and maintained at such places as shall be directed by the electrical bureau.

187 Article 20. Poles being removed from the highways shall be dug out and the pavement properly repaired.

Underground.

Article 21. To avoid accident or tampering with underground cables, conduits and manholes in the highways by unauthorized persons, a permit must be obtained from the electrical bureau authorizing the opening of manholes for repairs and for the drawing in or out of cables.

Article 22. Constructions of all conduits, manholes and connections thereto must be approved by the electrical bureau before being placed in the street.

Terminal poles.

Article 23. No permit for terminal poles will be granted unless the same are fed by an underground system, and where surrounding conditions would warrant its use.

Article 24. No permit for the erection of a terminal pole will be issued, for the distribution of telephone wires to a high building or series of connected high buildings. Such buildings will have to be supplied through an underground conduit entering the same.

Article 25. No permit for the erection of terminal poles will be granted when another device can be better substituted.

188 Article 26. These rules and regulations are subject to such changes and modifications as may be deemed necessary by the department.

DAVID R. WALKER,
Chief of Electrical Bureau.

Approved.
ABRAHAM L. ENGLISH,
Director of the Department of Public Safety.

189 EXHIBIT No. 7.

Copy.

Overhead and Underground Wires.

PHILADELPHIA, *April* 17, 1901.

Trolley miles.		E. L. miles.		Telp. & telg. miles.	
Over.	Under.	Over.	Under.	Over.	Under.
674.64	981.78	2010.44	356.62	6856.80	5<299.04
	City	.....	50.1	1613.32	3533.26
674.64	981.78	2010.44	406.72	8470.12	61832.30

	Miles overhead.	Miles underground.
Trolley	674.64	981.78
Electric light	2010.44	406.72
Telegraph & telephone	8470.12	61832.30
Total.....	11155.20	63220.80
Grand total.....	.....	74,376 miles.

190 And thereupon the learned judge before whom the cause was tried instructed the jury as follows:

GENTLEMEN OF THE JURY: The first two points of the defendant request me to say: "This is an action by the City of Philadelphia to recover from the Atlantic and Pacific Telegraph Company certain charges imposed by two ordinances, to wit, one approved January 6th, 1881, imposing a charge of one dollar per annum per pole upon the telegraph poles of said company, and the other approved March 30, 1883, imposing a charge of two dollars and fifty cents per annum per mile of telegraph wire belonging to said company within the limits of the city of Philadelphia."

191 It is also true that "the uncontradicted evidence shows that the poles and wires of the Atlantic and Pacific Telegraph Company are lawfully erected and maintained in the streets of Philadelphia, for the transaction of commerce between the States (among other purposes) and such poles and wires are therefore lawful structures and not to be in any way considered as nuisances." And it is further true that no penalty is to be imposed by the city for the maintenance of the same.

We instruct you to render a verdict in favor of the plaintiff, The City, for the full amount of its claim. In brief, my reason for giving you that instruction is this. This is the second trial of this case. Upon the first trial, the question was submitted to the jury, whether

or not these charges were unreasonable, the trial judge explaining that that was a question of fact raised by the evidence, and therefore to be determined by the jury. The jury that considered that case found that the charges were unreasonable to a certain extent, and found a verdict in favor of the city for a portion of its claim. The case was appealed to the circuit court of appeals for this circuit, and they decided that there had not been sufficient evidence offered to go to the jury in support of the defendant's claim that the
192 charges were unreasonable, and therefore that the jury ought to have been instructed in that case to find in favor of the city for the full amount of its claim. The case was sent back for another trial, of course affording the defendant an opportunity to offer other evidence upon that subject if it was within the defendant's power.

Now, we have had that trial, and, while the evidence is not identical with that which was offered upon the first trial, it is, in my judgement, substantially the same. I do not see that it varies in any essential particular the case as it was then presented to the court and to the jury. Therefore, in obedience to the instructions of the court of appeals, I direct you to render a verdict in favor of the plaintiff, for the full amount of its claim. And, in so doing, I refuse the last two points that have been presented to me by the defendant, to wit:

193 III. The ordinances of the city of Philadelphia, approved January 6 1881 and March 30 1883, respectively, upon which this suit is brought, are regulations of commerce between the States so far as they are sought to be applied to the defendant, The Atlantic and Pacific Telegraph Company, and they are therefore void.

I decline to charge as above requested.

IV. So far as the defendant, The Atlantic and Pacific Telegraph Company, is concerned, the city of Philadelphia has no power to enact the ordinances of January 6, 1881 and March 30 1883, and your verdict should therefore be for the defendant.

I decline to charge as above requested.

Counsel agree that the amount for which you will render your verdict is subject to correction in case any error in the calculation of interest shall hereafter be found. They also agree that the court may diminish the amount of the verdict by the charge for the year 1885 and interest thereon if the court shall be of opinion that the defense set up by the defendant, of the statute of limitations, to that item of the claim, is well founded.

To this instruction to find for the plaintiff and also to the refusal of the defendant's two points, the defendant excepts.

194 And thereupon the counsel for the said defendant did then and there except to the aforesaid charge and opinion of the said court; and inasmuch as the said charge and opinion, so excepted to, do not appear upon the record,

The said counsel for the said defendant did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And

thereupon the aforesaid judge, at the request of the said counsel for the defendant did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 10 day of May A. D. 1901.

JOHN B. McPHERSON.

The above bill of exceptions is correct.

E. SPENCER MILLER,
Per BELKNAP, *Att'y pro Pl'f.*

(Endorsed:) Cir. ct. U. S. E. dist. Pa. Oct. sess. 1891 No. 340 Bill of exceptions City of Philadelphia *vs.* Atlantic & Pacific Telegraph Co. Ap'l 27 '01 Presented J. B. McP. J. Read and Pettit Filed Aug. 2, 1901 Samuel Bell, clerk.

195 United States Circuit Court, October Sessions, 1891.

CITY OF PHILADELPHIA
vs.
THE ATLANTIC & PACIFIC TELEGRAPH COMPANY. } No. 93.

And now, to wit, this 17th day of May, A. D. 1901, the defendant moves that the amount of the verdict in the above cause be reduced by the sum of twelve hundred and seventy-nine and forty-four hundredths dollars, to wit, the amount of the license charges upon poles and wires for the year 1885, together with interest thereon, because the right to recover therefor is barred by the statute of limitations.

READ & PETTIT,
Att'ys for Defendant.

(Endorsed:) Octo. sess. 1891 C. C. U. S. 340. City of Phila. *vs.* Atl. & Pac. Tel. Co. Motion for reduction of verdict by $1279.44 Read & Pettit. Filed May 17, 1901 Samuel Bell, clerk, H. R.

196 U. S. Circuit Court, E. D. of Pa., October Sessions, 1891.

CITY OF PHILADELPHIA
vs.
ATLANTIC & PACIFIC TELEGRAPH CO. } No. 340.

Motion by Defendant to Enter Judgment with the Reduction Specified in the Reserved Point.

McPHERSON, *J.:*

This is an action brought by the City of Philadelphia to recover license fees charged against the defendant in respect of its poles and wires by virtue of certain ordinances. When the suit was brought, the fees for the year 1885 were more than six years overdue, and the question for consideration under the reserved point is, whether recovery of fees for that year is barred by the Pennsylvania statute of limitations.

The suit is in assumpsit, but as the practice act of 1887 has ap-

plied this name indifferently to the three forms of action that were known as covenant, debt and assumpsit, the name does little more than advise us that the action is *ex contractu*. The court is still required to scrutinize the cause of action, in order to determine to which of the three classes of contractual suits the present action belongs. Thus examined, it becomes clear that, before the act of 1887 was passed, the action of debt would have been the appropriate remedy to recover these fees, the ordinances providing no method of
197 collection. I had occasion to consider this question in Taylor Borough *v.* Central Pennsylvania Telephone Co., 8 Dist. Rep. 92, and as my views have not changed since that decision was made, I may be permitted to repeat a part of what was then said:

"It is true that the method of collecting the fee from the delinquent's property is not specified, but we see no difficulty in this silence. If the borough had lawful authority to impose such a fee, the defendant's duty to pay would at once arise; and as this duty would have been enforceable before the procedure act of 1887 by an action of debt (5 Am. & Eng. Ency., 167; 2 Shars. Bl. 159–160), it is now enforceable by an action of assumpsit. It seems to us a contradiction in terms to hold that the defendant is not obliged to pay unless the ordinance specifically declares by what method payment may be enforced. Save perhaps in exceptional cases, to say that a borough has authority to impose a fee, means that the citizen must pay or be subject to the compulsion of a suit. No doubt, in the interest of personal liberty, fines and penalties cannot be exacted without express provision in the ordinance; but the right to bring a civil suit, directed against the delinquent's property, seems to spring of necessity out of the right to levy the fee. Under the ordinance now being considered, the borough had no other remedy than the action of assumpsit."

The action now before the court is, therefore, the well-known action of debt, although it is labeled assumpsit; and the next step is to inquire whether an action of debt for license fees that are imposed by virtue of the police power of the State is within the Pennsylvania statute of limitations; for it is to be observed, that this statute does not bar all actions of debt, but merely "all actions of debt grounded upon any lending or contract without specialty, all actions of debt for arrearages of rent, except the proprietaries' quit rents." It does not seem necessary to refute at length the proposition, that such an action of debt as is now under consideration
198 is grounded upon "any lending or contract without specialty." It is an action upon an obligation imposed by law, and not upon an agreement voluntarily entered into by the defendant. It is contracts in fact, and not quasi contracts, that are included in the phrase just quoted, as the Pennsylvania courts have several times decided. The statute does not limit actions of debt that are not founded upon a lending or a contract in fact: Richards *v.* Bickley, 13 S. & R. 396; Roller *v.* Meredith, 4 Superior, 461.

The reserved point must be decided in favor of the plaintiff, and judgment will accordingly be entered upon the verdict without diminution.

(Exception to the defendant.)

(Endorsed:) 340 Oct. 1891 U. S. C. C. City of Phila. *vs.* Atlantic & Pacific Telegraph Co. Opinion, McPherson, J. ordering judgment to be entered on the verdict. Filed May 29, 1901 Samuel Bell, clerk H. R.

199 CITY OF PHILADELPHIA *vs.* ATLANTIC & PACIFIC TELEGRAPH Company. } U. S. C. C., Oct. Sess., 1891, No. 340.

Stipulation.

The parties hereto have revised the calculation of interest upon which the verdict is in part based and as a result correct the amount of the assessment of damages by substituting the sum of $7267.48 for the sum in which the jury rendered their verdict. They agree further that of this sum a portion equal to $1279.44 consists of the charges for poles and wires maintained by defendant company in 1885 and interest to the date of the verdict.

This agreement is without prejudice in any way whatsoever to the right of either party to writ of error or appeal in this cause.

Witness the hands of the parties by their attorneys, June 11th, 1901.

E. SPENCER MILLER,
Ass't City Solicitor for City of Philadelphia.
READ & PETTIT,
Att'ys for Atl. & Pac. Tel. Co.

200 (Endorsed:) Oct. sess. 1891 No. 340 City of Philadelphia *vs.* The Atlantic & Pacific Telegraph Co. Stipulation Filed June 11, 1901 Samuel Bell, clerk.

201 Supreme Court of United States, October Term, 1901.

ATLANTIC AND PACIFIC TELEGRAPH COMPANY, Plaintiff in Error, *vs.* CITY OF PHILADELPHIA, Defendant in Error. } No. —.

And now, to wit, this second day of August A. D. 1901, the plaintiff in error files its assignments of error in the above cause and assigns for error as follows:—

I. The court erred in overruling the objection made by the defendant to the following question asked by the plaintiff's counsel of the witness, Hon. A. M. Beitler, to wit:—

"Are you able to state whether the presence of wires overhead on telegraph poles a little distance inside the curb line is any substantial interference with the work of the fire service?"

II. The learned judge who tried the cause erred in not reducing

the amount of the verdict by the charge for the year 1885 and interest thereon.

III. The learned court erred in entering judgment against the defendant for the amount of the charge for the year 1885.

IV. The learned court erred in including in the amount of the judgment the license charges for the year 1885.

V. The learned judge who tried the cause erred in charging the jury as follows:—

"We instruct you to render a verdict in favor of the plaintiff, The City, for the full amount of its claim."

202 VI. The learned judge who tried the cause erred in refusing the third point submitted by the defendant, which third point was as follows:—

"The ordinances of the city of Philadelphia, approved January 6 1881 and March 30 1883, respectively, upon which this suit is brought, are regulations of commerce between the States so far as they are sought to be applied to the defendant, The Atlantic and Pacific Telegraph Company, and they are therefore void."

The answer of the learned judge thereto being as follows: "I decline to charge as above requested."

VII. The learned judge who tried the cause erred in refusing the fourth point submitted by the said defendant, which fourth point was as follows:—

"So far as the defendant, The Atlantic and Pacific Telegraph Company, is concerned, the city of Philadelphia has no power to enact the ordinances of January 6 1881 and March 30 1883, and your verdict should therefore be for the defendant."

The answer of the learned judge thereto being as follows: "I decline to charge as above requested."

VIII. The learned court erred in entering judgment in favor of the plaintiff for seven thousand two hundred and sixty-seven 48/100 ($7,267.48) dollars.

READ & PETTIT,
Attorneys for The Atlantic & Pacific Telegraph Co., Plaintiff in Error.

(Endorsed:) Supreme Court of the United States October T. 1901 No. —. Atlantic and Pacific Telegraph Company plaintiff in error *vs.* City of Philadelphia defendant in error Assignment of errors Read & Pettit Filed Aug. 2, 1901 Samuel Bell, clerk

203 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

CITY OF PHILADELPHIA
vs.
THE ATLANTIC & PACIFIC TELEGRAPH CO. } October Sessions, 1901, No. 340.

The petition of the Atlantic & Pacific Telegraph Company respectfully shows:

That on the 29th day of May 1901 a judgment was entered in the

circuit court of the United States for the eastern district of Pennsylvania in the above case, whereby your petitioner was aggrieved, and your petitioner herewith files its assignments of error, setting out separately and particularly each error which your petitioner assigns in said judgment and in the record of the proceedings prior thereto.

That said case involves the construction or application of the Constitution of the United States.

That said suit is brought to recover from the defendant certain license charges sought to be imposed by the City of Philadelphia on the said defendant, which the said defendant claims the said City of Philadelphia has no right or power to impose, for the reason that the same are a regulation of commerce between the States.

Wherefore, in accordance with the statute in such case
204 made and provided, your petitioner prays that a writ of error may be granted from said judgment to the Supreme Court of the United States.

And your petitioner will ever pray, etc.

THE ATLANTIC & PACIFIC TELEGRAPH COMPANY,
[SEAL.] By THOS. F. CLARK,
Vice-President.

205 STATE OF NEW YORK, }
County of New York, } ss:

Thomas F. Clark being duly sworn according to law, deposes and says that he is the vice-president of The Atlantic & Pacific Telegraph Company, the above-named petitioner, and on behalf of the said company says that the facts set forth in the foregoing petition are true, to the best of his knowledge, information and belief.

THOS. F. CLARK.

Sworn to and subscribed before me this 16th day of June, A. D 1901.

E. A. MACCLEAN,
[SEAL.] *Notary Public, N. Y. Co., No.* 1.

Allowed by the court.

(Endorsed:) C. C. U. S. for the eastern district of Pennsylvania October sess. 1891. No. 340. City of Philadelphia *vs.* Atlantic and Pacific Telegraph Co. Petition for a writ of error Read & Pettit Filed Aug. 2, 1901 Samuel Bell clerk.

206 Supreme Court of United States, October Term, 1901.

THE ATLANTIC & PACIFIC TELEGRAPH CO., Plaintiff in Error,
vs.
CITY OF PHILADELPHIA, Defendant in Error.
} No. —.

Know all men by these presents, that The Atlantic & Pacific Telegraph Company, as principal, and American Surety Company of New York as surety, are held and firmly bound unto the City of Philadelphia in the full and just sum of fourteen thousand five hundred and thirty-four dollars and ninety-six cents ($14,534.96), to be paid to the said City of Philadelphia, its certain attorney, successors or assigns, to which payment well and truly to be made we do bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this first day of August anno Domini one thousand nine hundred and one.

Whereas, lately, in the circuit court of the United States for the eastern district of Pennsylvania, judgment was entered against the Atlantic & Pacific Telegraph Company at the suit of the City of Philadelphia, October sessions, 1891, No. 340, and the said Atlantic & Pacific Telegraph Company having obtained a writ of error to the Supreme Court of the United States to reverse the said judgment rendered in the last above-entitled action, having filed a copy
207 thereof in the office of the clerk of said court and a citation directed to the said City of Philadelphia citing and admonishing it to be and appear in the Supreme Court of the United States, to be holden at Washington the second Monday of October next.

Now the condition of the above obligation is such: that of the said Atlantic & Pacific Telegraph Company shall prosecute their said writ of error to effect and answer all damages and costs, and if they shall fail to make their plea good, then the above obligation to be void, or else to remain in full force and virtue.

THE ATLANTIC & PACIFIC TELEGRAPH COMPANY,
By THOS. F. CLARK, *Vice-President.*
[SEAL.] AMERICAN SURETY CO. OF NEW YORK,
By R. R. BENEDICT, *Resident Vice-President.*

Attest: EDW. P. BAILEY,
Resident Ass't Secretary. [SEAL.]

Sealed and delivered in the presence of—
E. A. MACCLEAN.

Approved by the court.

(Endorsed:) Supreme Court of United States October T. 1901. No. — Atlantic and Pacific Telegraph Company plaintiff in error *vs.* City of Philadelphia defendant in error Bond Read & Pettit Filed Aug. 2, 1901 Samuel Bell, clerk.

208 CITY OF PHILADELPHIA
vs.
ATLANTIC AND PACIFIC TELEGRAPH Company.
U. S. C. C., October Sessions, 1891, No. 340.

We, the undersigned, do hereby stipulate and agree that the following papers shall constitute the record in the appeal to the Supreme Court of the United States in the case of The City of Philadelphia *vs.* The Atlantic and Pacific Telegraph Company.

Exemplification of record.
Affidavit of defense.
Præcipe for appearance.
Pleas.
Amended statement.
Additional plea filed at trial.
Motion for reduction of verdict.
Opinion ordering judgment to be entered on verdict.
Stipulation as to assessment of damages.
Bill of exceptions with exhibits.
Petition for writ of error and order thereon.
Assignments of error.
Citation.
Writ of error.
Bonds surwrit of error.

And we direct the clerk of the circuit court to certify to
209 the above papers only.

E. SPENCER MILLER,
Ass't City Sol'r.
READ & PETTIT,
Att'ys for the Atlantic & Pacific Telegraph Company.

(Endorsed:) C. C. U. S. October sess. 1891 No. 340 City of Philadelphia *vs.* Atlantic and Pacific Telegraph Co. Agreement as to what papers shall constitute the record Read & Pettit Filed Aug. 2, 1901 Samuel Bell, clerk.

210 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America, for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of City of Philadelphia *vs.* Atlantic & Pacific Telegraph Company No. 340 Oct. sess. 1891 as per stipulation of counsel filed, a copy of which is hereto attached, on file and now remaining among the records of the said court in my office.

Seal U. S. Circuit Court, E. D. Pennsylvania.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this eighth day of August in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-sixth.

SAMUEL BELL,
Clerk of C. C.

[Endorsed:] No. 340 Oct sessions 1891 Circuit court United States, eastern district of Pennsylvania. City of Philadelphia *vs.* Atlantic & Pacific Telegraph Co. Certified copy of record.

Endorsed on cover: File No. 18,264. E. Pennsylvania C. C. U.S. Term No. 163 Atlantic and Pacific Telegraph Company, plaintiff in error, *vs.* City of Philadelphia. Filed September 12", 1901.